

CODIFIED ORDINANCES OF BENWOOD

PART THREE - TRAFFIC CODE

CHAPTER ONE - Administration

- Art. 301. Definitions.
- Art. 303. Enforcement, Impounding and Penalty.
- Art. 305. Traffic Control.

CHAPTER THREE - Streets and Traffic Control Devices

- Art. 311. Street Obstructions and Special Uses.
- Art. 313. Traffic Control Devices.

CHAPTER FIVE - Vehicular Operation

- Art. 331. Crashes.
- Art. 333. Driving Under the Influence; Reckless Driving.
- Art. 334. Open Container Law.
- Art. 335. Speed Restrictions.
- Art. 337. Driving on Right; Passing.
- Art. 339. Turning and Starting; Signals.
- Art. 341. Right of Way.
- Art. 343. Special Stops Required.
- Art. 345. Safety and Equipment.
- Art. 347. Commercial and Heavy Vehicles.
- Art. 349. Miscellaneous Rules.
- Art. 351. Licensing Generally.
- Art. 353. Commercial Drivers.
- Art. 354. Motorized Scooters,
- Art. 355. All-Terrain Vehicles.

CHAPTER SEVEN - Parking

- Art. 361. Parking Generally.

CHAPTER NINE - Pedestrians and Bicycles

- Art. 371. Pedestrians.
- Art. 373. Bicycles.

CODIFIED ORDINANCES OF BENWOOD

PART THREE - TRAFFIC CODE

CHAPTER ONE - Administration

Art. 301. Definitions.

Art. 303. Enforcement, Impounding and Penalty.

Art. 305. Traffic Control.

**ARTICLE 301
Definitions**

301.01	Meaning of words and phrases.	301.24	Police officer.
301.02	Authorized emergency vehicle.	301.25	Private road or driveway; private property.
301.03	Bicycle.	301.26	Railroad.
301.04	Bus.	301.27	Railroad sign or signal.
301.05	Business district.	301.28	Railroad train.
301.06	Controlled-access highway.	301.29	Residence district.
301.07	Crosswalk.	301.30	Residential street.
301.08	Driver.	301.31	Right of way.
301.083	Electric bicycles.	301.32	Roadway.
301.085	Electric personal assistive mobility device.	301.33	Safety zone.
301.09	Explosives.	301.34	School bus.
301.10	Flammable liquid.	301.35	School grounds.
301.11	Gross weight.	301.36	Semitrailer.
301.12	Intersection.	301.37	Sidewalk.
301.13	Laned roadway.	301.38	Stop.
301.14	Moped.	301.39	Stop, stopping or standing.
301.15	Motorcycle.	301.40	Street or highway; alley.
301.16	Motor-driven cycle.	301.41	Through street or through highway.
301.17	Motor vehicle.	301.42	Traffic.
301.18	Owner.	301.43	Traffic control devices.
301.19	Park.	301.44	Traffic control signal.
301.20	Parking area.	301.45	Trailer.
301.201	Passenger van.	301.46	Truck.
301.21	Pedestrian.	301.47	Vehicle.
301.22	Person.	301.48	Wheelchair.
301.23	Pole trailer.		

CROSS REFERENCES

See sectional histories for similar State law
Speed race defined - see TRAF. 335.04

301.01 MEANING OF WORDS AND PHRASES.

The following words and phrases when used in this Traffic Code shall, for the purpose of this Traffic Code, have the meanings respectively ascribed to them in this article. (WVaC 17C-1-1)

301.02 AUTHORIZED EMERGENCY VEHICLE.

"Authorized emergency vehicle" means vehicles of the Fire Department, duly chartered rescue squad, Police Department, ambulance service, hospital police department, state, county or municipal agency and such privately owned ambulances, tow trucks, wreckers, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, postal service vehicles, snow removal equipment, Class A vehicles of firefighters, Class A vehicles of members of ambulance services, and Class A vehicles of members of duly chartered rescue squads, and all other emergency vehicles as are designated by the agency responsible for the operation and control of these persons or organizations. Class A vehicles are as defined by West Virginia Code 17A-10-1. Agency authorization and emergency equipment are defined in West Virginia Code 17C-15-26. Agencies responsible for issuing authorization for emergency vehicle permits may promulgate such regulations that are necessary for the issuance of permits for emergency vehicles. (WVaC 17C-1-6)

301.03 BICYCLE.

"Bicycle" means every device which does not have a motor attached and which is propelled by human power upon which any person may ride, having two tandem wheels either of which is more than twenty inches in diameter. (WVaC 17C-1-8)

301.04 BUS.

"Bus" means every motor vehicle designed for carrying more than seven passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation. (WVaC 17C-1-13)

301.05 BUSINESS DISTRICT.

"Business district" means the territory contiguous to and including a street or highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks or office buildings, railroad stations, and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the street or highway. (WVaC 17C-1-45)

301.06 CONTROLLED-ACCESS HIGHWAY.

"Controlled-access highway" means every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway. (WVaC 17C-1-41)

301.07 CROSSWALK.

"Crosswalk" includes:

- (a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the street or highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; and
- (b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface. (WVaC 17C-1-43)

301.08 DRIVER.

"Driver" means every person who drives or is in actual physical control of a vehicle. (WVaC 17C-1-31)

301.083 ELECTRIC BICYCLES.

(a) "Class 1 electric bicycle" means every electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of twenty miles per hour.

(b) "Class 3 electric bicycle" means every bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of twenty-eight miles per hour.

(c) "Electric bicycle" means every two-wheel or three-wheel bicycle equipped with fully operable pedals and an electric motor of less than 750 watts that is a Class 1 electric bicycle or a Class 3 electric bicycle. (WVaC 17C-1-70)

301.085 ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE.

"Electric personal assistive mobility device" or "EPAMD" means a self-balancing, two nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of seven hundred fifty watts (one horse power), whose maximum speed on a paved level surface, when powered solely by such a propulsion system while ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour. (WVaC 17C-1-66)

301.09 EXPLOSIVES.

"Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosive and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. (WVaC 17C-1-24)

301.10 FLAMMABLE LIQUID.

"Flammable liquid" means any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closedcup test device. (WVaC 17C-1-25)

301.11 GROSS WEIGHT.

"Gross weight" means the weight of a vehicle without load plus the weight of any load thereon. (WVaC 17C-1-26)

301.12 INTERSECTION.

"Intersection" includes:

- (a) The area embraced within the prolongation or connection of the lateral curb lines or, if none, then the lateral boundary lines of the roadways of two streets or highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different streets or highways joining at any other angle may come in conflict; and
- (b) Where a street or highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided street or highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting street or highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such streets or highways shall be regarded as a separate intersection. (WVaC 17C-1-42)

301.13 LANED ROADWAY.

"Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic. (WVaC 17C-1-39)

301.14 MOPED.

"Moped" means every motorcycle or motor-driven cycle unless otherwise specified in this Traffic Code, which is equipped with two or three wheels, foot pedals to permit muscular propulsion and an independent power source providing a maximum of two brake horsepower, but excludes electric bicycles as defined in Section 301.083. If a combustion engine is used, the maximum piston or rotor displacement shall be fifty cubic centimeters regardless of the number of chambers in such power source. The power source shall be capable of propelling the vehicle, unassisted, at a speed not to exceed thirty miles per hour on a level road surface and shall be equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged. (WVaC 17C-1-5a)

301.15 MOTORCYCLE.

"Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor. (WVaC 17C-1-4)

301.16 MOTOR-DRIVEN CYCLE.

"Motor-driven cycle" means every motorcycle having a piston displacement of more than fifty cubic centimeters but not more than 150 cubic centimeters, or with not more than five brake horsepower. (WVaC 17C-1-5)

301.17 MOTOR VEHICLE.

"Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except motorized wheelchairs. (WVaC 17C-1-3)

301.18 OWNER.

"Owner" means a person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this Traffic Code. (WVaC 17C-1-32)

301.19 PARK.

"Park" when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading. (WVaC 17C-1-54)

301.20 PARKING AREA.

"Parking area" means lots, areas or other accommodations for the parking of vehicles off the street or highway and open to public use with or without charge. (WVaC 17C-1-60)

301.201 PASSENGER VAN.

"Passenger van" means any van or other motor vehicle owned by any agency, business or other legal entity and operated for the purpose of transportation of children under the age of eighteen years, other than a van utilized for private use, taxicab, bus or school bus. Passenger vans include, but are not limited to, vehicles used by daycare centers, after-school centers and nursery schools: provided, that the term "passenger van" does not include any van or other motor vehicle which is utilized for the specific purpose of transporting children to medical facilities for the purpose of medical or dental treatment and which loads and unloads the children on private property, making no stops for loading or unloading along public roads or highways. (WVaC 17C-1-64)

301.21 PEDESTRIAN.

"Pedestrian" means any person afoot or any person using a wheelchair. (WVaC 17C-1-30)

301.22 PERSON.

"Person" means every natural person, firm, copartnership, association or corporation. (WVaC 17C-1-29)

301.23 POLE TRAILER.

"Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, trusses or structural members capable, generally, of sustaining themselves as beams between the supporting connections. (WVaC 17C-1-17)

301.24 POLICE OFFICER.

"Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations. (WVaC 17C-1-33)

301.25 PRIVATE ROAD OR DRIVEWAY; PRIVATE PROPERTY.

(a) "Private road" or "driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(b) "Private property" means real estate in private ownership without regard to the manner in which it is used. (WVaC 17C-1-36)

301.26 RAILROAD.

"Railroad" means a carrier of persons or property, upon cars, other than streetcars, operated upon stationary rails. (WVaC 17C-1-21)

301.27 RAILROAD SIGN OR SIGNAL.

"Railroad sign" or "signal" means any sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train. (WVaC 17C-1-49)

301.28 RAILROAD TRAIN.

"Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars. (WVaC 17C-1-22)

301.29 RESIDENCE DISTRICT.

"Residence district" means the territory contiguous to and including a street or highway not comprising a business district when the property on such street or highway for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business. (WVaC 17C-1-46)

301.30 RESIDENTIAL STREET.

"Residential street" means the entire width between the boundary lines of every way, whether publicly or privately maintained, located within any subdivision, development or other similar area used primarily for residential purposes when any part thereof is open to the common use of those living in such area for the purpose of vehicular travel. (WVaC 17C-1-62)

301.31 RIGHT OF WAY.

"Right of way" means the privilege of the immediate use of the street or highway. (WVaC 17C-1-51)

301.32 ROADWAY.

"Roadway" means that portion of a street or highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a street or highway includes two or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively. (WVaC 17C-1-37)

301.33 SAFETY ZONE.

"Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone. (WVaC 17C-1-44)

301.34 SCHOOL BUS.

"School bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school, or privately owned and operated for compensation for the transportation of children to or from school. (WVaC 17C-1-7)

301.35 SCHOOL GROUNDS.

"School grounds" includes the land on which a school is built together with such other land used by students for play, recreation or athletic events while attending school. (WVaC 17C-1-55)

301.36 SEMITRAILER.

"Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle. (WVaC 17C-1-16)

301.37 SIDEWALK.

"Sidewalk" means that portion of a street or highway between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians. (WVaC 17C-1-38)

301.38 STOP.

"Stop" when required, means complete cessation from movement. (WVaC 17C-1-52)

301.39 STOP, STOPPING OR STANDING.

"Stop", "stopping," or "standing," when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal. (WVaC 17C-1-53)

301.40 STREET OR HIGHWAY; ALLEY.

(a) "Street" or "highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. (WVaC 17C-1-35)

(b) "Alley" means a street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic.

301.41 THROUGH STREET OR THROUGH HIGHWAY.

"Through street" or "through highway" means every street or highway or portion thereof at the entrances to which vehicular traffic from intersecting streets or highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this Traffic Code. (WVaC 17C-1-40)

301.42 TRAFFIC.

"Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any street or highway for purposes of travel. (WVaC 17C-1-50)

301.43 TRAFFIC CONTROL DEVICES.

"Traffic control device" means any sign, signal, marking and device not inconsistent with this Traffic Code placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic. (WVaC 17C-1-47)

301.44 TRAFFIC CONTROL SIGNAL.

"Traffic control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed. (WVaC 17C-1-48)

301.45 TRAILER.

"Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.
(WVaC 17C-1-15)

301.46 TRUCK.

"Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property.
(WVaC 17C-1-12)

301.47 VEHICLE.

"Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a street or highway, except devices moved by human power or used exclusively upon stationary rails or tracks or wheelchairs.
(WVaC 17C-1-2)

301.48 WHEELCHAIR.

"Wheelchair" means a motorized or nonmotorized wheeled device designed for, and used by, a person with disabilities that is incapable of a speed in excess of eight miles per hour.
(WVaC 17C-1-65)

ARTICLE 303
Enforcement, Impounding and Penalty

<p>303.01 Authority of Police and Fire Department officials.</p> <p>303.02 Application to vehicles upon streets and highways; exceptions.</p> <p>303.03 Obedience to police officers; fleeing.</p> <p>303.04 Application to government vehicles; exception.</p> <p>303.05 Authorized emergency vehicles.</p>	<p>303.06 Application to persons riding animals or driving animal-drawn vehicles.</p> <p>303.07 Impounding of vehicles; redemption.</p> <p>303.08 Traffic tickets; arrests.</p> <p>303.09 Removal of charges, fixed fines, officer's record.</p> <p>303.10 Rights of owners of real property.</p> <p>303.99 Penalty.</p>
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CROSS REFERENCES

See sectional histories for similar State law
Disposition of abandoned vehicles - see W. Va. Code 17-24-5 et seq.
Uniform application of West Virginia traffic law - see W. Va. Code 17C-2-7
Power of local authorities - see W. Va. Code 17C-2-8

303.01 AUTHORITY OF POLICE AND FIRE DEPARTMENT OFFICIALS.

(a) It shall be the duty of the officers of the Police Department to enforce all street traffic laws of this Municipality and all of the State vehicle laws applicable to street traffic in this Municipality.

(b) Officers of the Police Department are hereby authorized to direct all traffic by voice, hand or signal in conformance with traffic laws; provided that in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the Police Department may direct traffic as conditions may require notwithstanding the provisions of the traffic laws.

(c) Officers of the Fire Department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity.

303.02 APPLICATION TO VEHICLES UPON STREETS AND HIGHWAYS; EXCEPTIONS.

The provisions of this Traffic Code relating to the operation of vehicles refer exclusively to the operation of vehicles upon streets and highways except:

- (a) Where a different place is specifically referred to in a given section.
- (b) The provisions of this Traffic Code except Article 347 shall apply upon streets and highways as defined in Section 351.06.
(WVaC 17C-2-1)

303.03 OBEDIENCE TO POLICE OFFICERS; FLEEING.

(a) No person shall willfully fail or refuse to comply with a lawful order or direction of any police officer or designated special officer invested by law with authority to direct, control or regulate traffic.
(WVaC 17C-2-3(c))

(b) No person shall operate a vehicle so as to willfully elude or flee a police officer or designated special officer after receiving a visible or audible signal from such an officer to bring his vehicle to a stop.

303.04 APPLICATION TO GOVERNMENT VEHICLES; EXCEPTION.

(a) The provisions of this Traffic Code applicable to the drivers of vehicles upon the streets or highways shall apply to the drivers of all vehicles owned or operated by the United States, this State, or any county, Municipality, town, district or any other political subdivision of the State, except as provided in this section and subject to such specific exceptions as are set forth in this Traffic Code with reference to authorized emergency vehicles.

(b) Unless specifically made applicable, the provisions of this Traffic Code shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a street or highway but shall apply to such persons and vehicles when traveling to or from such work.
(WVaC 17C-2-4)

303.05 AUTHORIZED EMERGENCY VEHICLES.

(a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

- (b) The driver of an authorized emergency vehicle may:
- (1) Park or stand, irrespective of the provisions of this Traffic Code;
 - (2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
 - (3) Exceed the speed limits so long as he does not endanger life or property;
 - (4) Disregard regulations governing direction of movement or turning in specified directions.

(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when the driver of any such vehicle while in motion sounds audible signal by bell, siren or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted flashing lamp as authorized by Section 345.18 which is visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a warning light visible from in front of the vehicle.

(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

(WVaC 17C-2-5)

303.06 APPLICATION TO PERSONS RIDING ANIMALS OR DRIVING ANIMAL-DRAWN VEHICLES.

Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Traffic Code, except those provisions of this Traffic Code which by their very nature can have no application.

(WVaC 17C-2-6)

303.07 IMPOUNDING OF VEHICLES; REDEMPTION.

Police officers are authorized to provide for the removal and impounding of a vehicle under the following circumstances:

- (a) When any vehicle is left unattended upon any street, bridge or causeway and is so illegally parked so as to constitute a hazard or obstruction to the normal movement of traffic, or so as to unreasonably interfere with street cleaning or snow removal operations.
- (b) When any vehicle has been abandoned or junked on private or public property as provided in West Virginia Code Article 17-24.
- (c) When any vehicle has been stolen or operated without the consent of the owner.
- (d) When any vehicle displays illegal license plates or fails to display the current lawfully required license plates.
- (e) When any vehicle has been used in or connected with the commission of a felony.
- (f) When any vehicle has been damaged or wrecked so as to be inoperable or violates equipment provisions of this Traffic Code or West Virginia Code Article 17C-15 whereby its continued operation would constitute a condition hazardous to life, limb or property.
- (g) When any vehicle is left unattended due to the removal of an ill, injured or arrested operator.
- (h) When any vehicle has been operated by any person who has failed to stop in case of a crash or collision.
- (i) When any vehicle has been operated by any person who is driving without a lawful license or while his license has been suspended or revoked.

- (j) When any vehicle is found for which two or more citation tags for violations of this Traffic Code have been issued and the owner or operator thereof has failed to respond to such citation tags as lawfully required.

Any vehicle removed under authority of subsection (b) hereof shall be disposed of as provided under West Virginia Code Article 17-24. Any other vehicle removed under authority of this section shall be ordered into storage and the Police Department shall forthwith notify the registered vehicle owner of the fact of such removal and impounding, reasons therefor and the place of storage. Any person desiring to redeem an impounded vehicle shall appear at the Police Department to furnish satisfactory evidence of identity and ownership or right to possession. Prior to issuance of a release form, the claimant, owner or operator shall either pay the amount due for any fines for violations on account of which such vehicle was impounded or, as the court may require, post a bond in an amount set by the court, to appear to answer to such violations. The pound operator shall release such vehicle upon the receipt of the release form and payment of all towage and storage charges.

303.08 TRAFFIC TICKETS; ARRESTS.

The Chief of the Police Department is authorized and directed to supply police officers with tags which shall be used for the purpose of giving the notice to owners, chauffeurs and drivers of motor vehicles and other vehicles where there are any violations of the traffic laws and rules of the Police Department, that such owner shall appear in Mayor's Court, designating the date and time thereof; provided, however, that this provision shall not interfere with the rights of policemen to arrest on view for crimes and misdemeanors, which power is given by law now in existence.

303.09 REMOVAL OF CHARGES, FIXED FINES, OFFICER'S RECORD.

No police officer or City official shall have the power to remove any charge for a violation of this Traffic Code, except a fixed fine may be assessed and collected by the Clerk of the Mayor's Court, with the approval of the Mayor in his capacity as Judge of the Mayor's Court, before a trial for the offense has been heard. The officer's record of arrest must not be destroyed or changed prior to such hearing.

303.10 RIGHTS OF OWNERS OF REAL PROPERTY.

Nothing in this Traffic Code shall be construed to prevent an owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this Traffic Code, or otherwise regulating such use as may seem best to such owner. (WVaC 17C-2-9)

303.99 PENALTY.

Whoever violates any provision of this Traffic Code for which another penalty is not provided shall, for a first conviction thereof, be fined not more than one hundred dollars (\$100.00) or imprisoned not more than ten days; for a second such conviction within one year thereafter such person shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than twenty days, or both; and upon a third or subsequent conviction such person shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both. (WVaC 17C-18-1)

**ARTICLE 305
Traffic Control**

305.01 Traffic Control File.
305.02 Amendments.

305.03 Conformity with State Manual.
303.99 Penalty.

CROSS REFERENCES

Uniformity with State law required - see W. Va. Code
17C-2-7

Powers of Municipality - see W. Va. Code 17C-2-8

305.01 TRAFFIC CONTROL FILE.

(a) There is hereby established a Traffic Control File which shall be prepared and kept to date by the Chief of Police and maintained in such office. The File shall constitute the permanent and official records of through streets, stop intersections, yield right of way intersections, school zones, one-way streets, prohibited and limited parking areas, prohibited and restricted turns, local limit streets, other traffic control devices and miscellaneous traffic regulations.

(b) The Traffic Control File existing as of the date of passage of this section is incorporated as part of this Traffic Code. The Traffic Control File shall include the following information:

- (1) Type of traffic control device designation.
- (2) Complete description of street or area affected.
- (3) Number of the ordinance authorizing designation.
- (4) Effective date of the ordinance.
- (5) Date lawful traffic control devices were erected.

305.02 AMENDMENTS.

Amendments to the Traffic Control File shall be made by legislation passed by Council. Upon the effective date of such legislation and upon the erection of lawful traffic control devices giving notice thereof, amendments shall be in full force and effect. All such amendments shall be recorded on the official Traffic Control File.

305.03 CONFORMITY WITH STATE MANUAL.

All traffic control devices placed pursuant to the provisions of this Traffic Code shall conform to the West Virginia Manual of Uniform Traffic Control Devices for Streets and Highways, as set forth in West Virginia Code 17C-3-1.

305.99 PENALTY.

After the effective date of any ordinance regulating the control of traffic by the adoption of any amendment to the Traffic Control File and the erection of lawful traffic control devices giving notice thereof, any person violating any such traffic control regulation shall be punished as provided in Section 303.99.

CHAPTER THREE - Streets and Traffic Control Devices

Art. 311. Street Obstructions and Special Uses.

Art. 313. Traffic Control Devices.

ARTICLE 311

Street Obstructions and Special Uses

**311.01 Placing injurious material
in street.**

311.02 Play streets.

311.03 Toy vehicles on streets.

311.04 Parades and assemblages.

311.05 Skateboards or skates.

311.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Authority to prohibit littering in streets - see

W. Va. Code 8-12-5(3)

Authority to regulate processions or assemblages -

see W. Va. Code 17C-2-8(a)(3)

Dropping, leaking loads - see TRAF. 347.04

311.01 PLACING INJURIOUS MATERIAL IN STREET.

(a) No person shall throw or deposit upon any street or highway any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle upon such street or highway.

(b) Any person who drops, or permits to be dropped or thrown, upon any street or highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(c) Any person removing a wrecked or damaged vehicle from a street or highway shall remove any glass or other injurious substance dropped upon the street or highway from such vehicle.

(WVaC 17C-14-11)

(d) No person shall throw, place or deposit upon any street or highway any material, article or substance which injures or damages, or is likely to injure or damage, the street or highway.

311.02 PLAY STREETS.

(a) No person shall use the public streets, highways, alleys, thoroughfares, roads or avenues of the Municipality for the purpose of engaging in or playing any games or athletic activities, except public ways specifically set aside for such purposes.

(b) When authorized signs are erected indicating any street or part thereof as a play street, no person shall drive a vehicle upon any such street or highway or portion thereof except drivers of vehicles having business or whose residence is within such closed area, and then any such driver shall exercise the greatest care in driving upon any such street or highway or portion thereof.

311.03 TOY VEHICLES ON STREETS.

No person on roller skates or riding in or by means of any sled, toy vehicle, skateboard or similar device shall go upon any roadway except while crossing a street on a crosswalk and except on streets set aside as play streets.

311.04 PARADES AND ASSEMBLAGES.

No person, group of persons or organization shall conduct or participate in any parade, assemblage or procession other than a funeral procession upon any street or highway, or block off any street or highway area, without first obtaining a permit from the Police Chief.

Applications for such permit shall be made on such forms as may be prescribed and shall contain such information as is reasonably necessary to a fair determination of whether a permit should be issued. Applications shall be filed not less than five days before the time intended for such parade, procession or assemblage.

The permit may be refused or canceled if:

- (a) The time, place, size or conduct of the parade including the assembly areas and route of march would unreasonably interfere with the public convenience and safe use of the streets and highways.
- (b) The parade would require the diversion of so great a number of police officers to properly police the line of movement, assembly area and areas contiguous thereto so as to deny normal police protection to the Municipality.
- (c) The parade route of march or assembly areas would unreasonably interfere with the movement of police vehicles, fire-fighting equipment or ambulance service to other areas of the Municipality.
- (d) The parade would unreasonably interfere with another parade for which a permit has been issued.
- (e) The information contained in the application is found to be false, misleading or incomplete in any material detail.
- (f) An emergency such as a fire or storm would prevent the proper conduct of the parade.

The permit or any order accompanying it may limit or prescribe reasonable conditions, including the hours, the places of assembly and of dispersal, the route of march or travel and the streets, highways or portions thereof which may be used or occupied.

311.05 SKATEBOARDS OR SKATES.

(a) Prohibited Use on City Property. The use of skateboards or skates on the property of the City, including the parks, streets, sidewalks and alleyways of the City is hereby prohibited.

(b) Areas of Permitted Use. The use of skateboards or skates is permitted at the Benwood Skate Park situate south of the Benwood Volunteer Fire Department subject to the regulation of City Council.
(Ord. 8-28-07.)

311.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty.)

ARTICLE 313
Traffic Control Devices

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|---|---|
| <p>313.01 Obedience to traffic control devices.</p> <p>313.02 Obedience to traffic control instructions at street construction.</p> <p>313.03 Traffic control signal terms and lights.</p> <p>313.04 Pedestrian control signals.</p> <p>313.05 Flashing traffic signals.</p> | <p>313.06 Unauthorized signs and signals, hiding from view, advertising.</p> <p>313.07 Alteration, injury, removal of traffic control devices.</p> <p>313.08 Traffic violations in construction zones.</p> <p>313.99 Penalty.</p> |
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CROSS REFERENCES

See sectional histories for similar State law
 Authority to place traffic control devices - see
 W. Va. Code 17C-2-8(a)(2), 17C-3-3
 Placing traffic control devices on State highways -
 see W. Va. Code 17C-2-8(b), 17C-3-2
 Local regulations requiring traffic control devices -
 see W. Va. Code 17C-2-8(c)
 Traffic control devices defined - see TRAF. 301.43
 Traffic control signal defined - see TRAF. 301.44

313.01 OBEDIENCE TO TRAFFIC CONTROL DEVICES.

(a) The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto placed in accordance with the provisions of this Traffic Code, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this Traffic Code.

(b) No provision of this Traffic Code for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective even though no signs are erected or in place.

(WVaC 17C-3-4)

313.02 OBEDIENCE TO TRAFFIC CONTROL INSTRUCTIONS AT STREET CONSTRUCTION.

The driver of any vehicle shall obey the traffic-control instructions of any law enforcement officer or persons authorized by the Commissioner of Highways or by proper local authorities to operate traffic control devices, act as flagmen or operate authorized vehicles engaged in work at or near the site of street or highway construction maintenance work, for the purpose of regulating, warning or guiding traffic, subject to the exceptions granted the driver of an authorized emergency vehicle in this Traffic Code.

(WVaC 17C-3-4a)

313.03 TRAFFIC CONTROL SIGNAL TERMS AND LIGHTS.

Whenever traffic is controlled by traffic control signals exhibiting the words "go," "caution" or "stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and such terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

- (a) Green alone or "go":
 - (1) Vehicular traffic facing the signal, except when prohibited under Section 343.02, may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.
 - (2) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.
- (b) Yellow alone or "caution" when showing following the green or "go" signal:
 - (1) Vehicular traffic facing the signal is thereby warned that the red or "stop" signal will be exhibited immediately thereafter and such vehicular traffic shall not enter or be crossing the intersection when the red or "stop" signal is exhibited.
 - (2) Pedestrians facing such signal are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right of way to all vehicles.
- (c) Red alone or "stop":
 - (1) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "go" is shown alone except as provided in subsection (c)(2) and (3) hereof.
 - (2) A vehicle which is stopped in obedience to a red or "stop" signal as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the entrance to the intersection, may cautiously make a right turn but such vehicle shall yield the right of way to pedestrians lawfully within a crosswalk and to other vehicular traffic proceeding as directed by the signal at such intersection, except that Council may by ordinance prohibit any such right turn against a red or "stop" signal at any intersection which ordinance shall be effective when a sign is erected at such intersection giving notice thereof.

- (3) A vehicle which is stopped in obedience to a red or "stop" signal as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the entrance to the intersection on a one-way street which intersects another one-way street on which traffic moves to the left, may cautiously make a left turn into the one-way street but such vehicle shall yield the right of way to pedestrians lawfully within a crosswalk and to other vehicular traffic proceeding as directed by the signal at such intersection, except that Council may by ordinance prohibit any such left turn against a red or "stop" signal at any intersection, which ordinance shall be effective when a sign is erected at such intersection giving notice thereof.
- (4) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.
- (d) Red with green arrow:
 - (1) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right of way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection.
 - (2) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.
- (e) In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.
(WVaC 17C-3-5)

313.04 PEDESTRIAN CONTROL SIGNALS.

Whenever special pedestrian control signals exhibiting the words "walk" or "wait" are in place such signals shall indicate as follows:

- (a) Walk. Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right of way by the drivers of all vehicles.
- (b) Wait. No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his or her crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.
(WVaC 17C-3-6)

313.05 FLASHING TRAFFIC SIGNALS.

Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

- (a) Flashing Red (Stop Signal). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.
- (b) Flashing Yellow (Caution Signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

Local authorities, in areas that experience low traffic times, may permit flashing signals between the hours of eleven o'clock p.m. and six o'clock a.m.
(WVaC 17C-3-7)

313.06 UNAUTHORIZED SIGNS AND SIGNALS, HIDING FROM VIEW, ADVERTISING.

(a) No local authority or person shall place, maintain or display upon or in view of any street or highway any unauthorized traffic control device or traffic control signal, or any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic control device or railroad sign or signal, or which attempts to direct the movement of traffic or which hides from view or interferes with the effectiveness of any official traffic control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any street or highway any traffic control device bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to a street or highway of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(b) Every such prohibited device, signal, sign or marking is hereby declared to be a public nuisance and the Commissioner of Highways or other authority having jurisdiction over the street or highway is hereby empowered to remove the same or cause it to be removed without notice.

(WVaC 17C-3-8)

313.07 ALTERATION, INJURY, REMOVAL OF TRAFFIC CONTROL DEVICES.

No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down or remove any official traffic control device or any railroad sign or signal or any inscription, shield or insignia thereon, or any other part thereof.

(WVaC 17C-3-9)

313.08 TRAFFIC VIOLATIONS IN CONSTRUCTION ZONES.

(a) Where street or highway construction work is being conducted, signs and other traffic control devices, as adopted in West Virginia Code 17C-3-1, shall be posted giving the location of the work and notifying all motorists as to the speed limit and any other traffic restrictions.

(b) No person shall violate any posted speed restriction or traffic restriction at such construction site referred to in subsection (a) of this section.

(c) Nothing in this section shall be construed to preclude prosecution of any operator of a motor vehicle who commits a violation of any other provision of this Traffic Code for such violation.

(WVaC 17C-3-4b)

313.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty if no specific penalty is provided.)

- (a) General Penalty. Whoever violates Section 313.01, 313.02 or 313.04 shall be fined not more than one hundred dollars (\$100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars (\$200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars (\$500.00).
- (b) Construction Zones.
 - (1) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in Section 313.08 by less than fifteen miles per hour shall be fined not more than two hundred dollars (\$200.00).
 - (2) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in Section 313.08 by fifteen miles per hour or more shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than twenty days, or both.

CHAPTER FIVE - Vehicular Operation

- Art. 331. Crashes.
- Art. 333. Driving Under the Influence; Reckless Driving.
- Art. 334. Open Container Law.
- Art. 335. Speed Restrictions.
- Art. 337. Driving on Right; Passing.
- Art. 339. Turning and Starting; Signals.
- Art. 341. Right of Way.
- Art. 343. Special Stops Required.
- Art. 345. Safety and Equipment.
- Art. 347. Commercial and Heavy Vehicles.
- Art. 349. Miscellaneous Rules.
- Art. 351. Licensing Generally.
- Art. 353. Commercial Drivers.
- Art. 354. Motorized Scooters.
- Art. 355. All-Terrain Vehicles.

ARTICLE 331 Crashes

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| 331.01 Crashes involving death or personal injuries. | 331.06 Immediate reports of crashes. |
| 331.02 Crashes involving damage to vehicle. | 331.07 When driver unable to report. |
| 331.03 Duty to give information and render aid. | 331.08 Garages to report bullet damage. |
| 331.04 Collision with unattended vehicle. | 331.99 Penalty. |
| 331.05 Collision with fixtures upon a street or highway. | |

CROSS REFERENCES

- See sectional histories for similar State law
- Authority to require local crash report - see W. Va. Code 17C-4-15
- Impounding wrecked vehicles - see TRAF. 303.07
- Removal of glass, etc. from highway - see TRAF. 311.01

331.01 CRASHES INVOLVING DEATH OR PERSONAL INJURIES.

(a) The driver of any vehicle involved in a crash resulting in the injury to or death of any person shall immediately stop the vehicle at the scene of the crash or as close to the scene as possible and return to and remain at the scene of the crash until he or she has complied with the requirements of Section 331.03; provided, that the driver may leave the scene of the crash as may reasonably be necessary for the purpose of rendering assistance to any person injured in the crash, as required by Section 331.03.

(b) Any driver who is involved in a crash in which another person suffers bodily injury and who intentionally violates subsection (a) when he or she knows or has reason to believe that another person has suffered physical injury in said crash shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both.

(c) Notwithstanding the provisions of subsection (b), any driver who is involved in a crash in which another person suffers serious bodily injury and who intentionally violates subsection (a) when he or she knows or has reason to believe that another person has suffered physical injury in said crash is guilty of a felony and shall be prosecuted under appropriate State law.

(d) Notwithstanding subsection (b) or (c), any driver who is involved in a crash that proximately causes the death of another person who intentionally violates subsection (a) when he or she knows or has reason to believe that another person has suffered physical injury in said crash is guilty of a felony and shall be prosecuted under appropriate State law.

(e) As used in this section:

- (1) "Bodily injury" means injury that causes substantial physical pain, illness or any impairment of physical condition;
- (2) "Physical injury" means bodily injury, serious bodily injury or death; and
- (3) "Serious bodily injury" means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health, prolonged loss or impairment of the function of any bodily organ, loss of pregnancy, or the morbidity or mortality occurring because of a preterm delivery.

(f) The Commissioner shall revoke the license or permit or operating privilege to drive of any resident or nonresident person convicted pursuant to the provisions of this section for a period of one year from the date of conviction or the date of release from incarceration, whichever is later.

(g) This section may be known and cited as Erin's Law.
(WVaC 17C-14-1)

331.02 CRASHES INVOLVING DAMAGE TO VEHICLE.

The driver of any vehicle involved in a crash resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such crash or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such crash until he has fulfilled the requirements of Section 331.03. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with such requirements under such circumstances shall be guilty of a misdemeanor.
(WVaC 17C-4-2)

331.03 DUTY TO GIVE INFORMATION AND RENDER AID.

- (a) (1) The driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall, if physically able to do so, provide to the person struck or the driver or occupant of or person attending any vehicle collided with, the following:
- A. His or her name, a valid telephone number where he or she may be contacted and the year, make, model and last four digits of the vehicle identification number of the vehicle he or she is driving; and
 - B. Proof of security and financial responsibility required by West Virginia Code 17D-2A-3 and 17D-4-2, and if provided by insurance, the information provided upon the certificate of insurance, including the name of the insured, the name and contact information of the insurer and insurance policy number.
- (2) A driver may meet the requirements of this subsection by providing the information required herein to a law-enforcement officer who is investigating or providing assistance at the scene of the collision, who shall, if practical under the circumstances, provide the information to any person entitled thereto pursuant to this subsection.

(b) The driver of any vehicle involved in a crash resulting in injury to or death of any person, if physically able to do so, shall render to any person injured in such crash reasonable assistance, including the carrying, or the making arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person. (WVaC 17C-4-3)

331.04 COLLISION WITH UNATTENDED VEHICLE.

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof. (WVaC 17C-4-4)

331.05 COLLISION WITH FIXTURES UPON A STREET OR HIGHWAY.

The driver of any vehicle involved in a crash resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his or her name and address and of the registration number of the vehicle he or she is driving and shall upon request and if available exhibit his or her driver's license and shall make report of such crash when and as required. (WVaC 17C-4-5)

331.06 IMMEDIATE REPORTS OF CRASHES.

The driver of a vehicle involved in a crash resulting in injury to or death of any person or total property damage to an apparent extent of one thousand dollars (\$1,000) or more shall immediately by the quickest means of communication, give notice of such crash to the Police Department. (WVaC 17C-4-6)

331.07 WHEN DRIVER UNABLE TO REPORT.

Whenever the driver of a vehicle is physically incapable of making an immediate notification of a crash as required in Section 331.06 and there was another occupant in the vehicle at the time of the crash capable of making a notification, such occupant shall make or cause to be made such notification not made by the driver. (WVaC 17C-4-8)

331.08 GARAGES TO REPORT BULLET DAMAGE.

The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been struck by any bullet, shall report to the Police Department within twenty-four hours after such motor vehicle is received, giving the engine number, registration number, and the name and address of the owner or operator of such vehicle.
(WVaC 17C-4-12)

331.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty.)

Any person violating the provisions of Section 331.01 after being involved in a crash resulting in physical injury but not death to any person shall be imprisoned for not more than thirty days, or fined not more than one thousand dollars (\$1,000) or both.
(WVaC 17C-4-1)

ARTICLE 333
Driving Under the Influence; Reckless Driving

333.01	Driving under the influence.	333.02	Reckless driving.
333.011	Participation in Motor Vehicle Alcohol Test and Lock Program.	333.03	Hazardous driving.
		333.99	Penalty.

CROSS REFERENCES

See sectional histories for similar State law
 Authority to prohibit driving under the influence -
 see W. Va. Code 8-12-5(21)
 Compliance with State law - see W. Va. Code 17C-5-11a
 Implied consent - see W. Va. Code 17C-5A

333.01 DRIVING UNDER THE INFLUENCE.

- (a) Definitions.
- (1) "Impaired state" means a person:
 - A. Is under the influence of alcohol;
 - B. Is under the influence of any controlled substance;
 - C. Is under the influence of any other drug or inhalant substance;
 - D. Is under the combined influence of alcohol and any controlled substance or any other drug; or
 - E. Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.
 - (2) "Bodily injury" means injury that causes substantial physical pain, illness or any impairment of physical condition.
 - (3) "Controlled substance" has the meaning provided in West Virginia Code 60A-1-101.
 - (4) "Serious bodily injury" means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.
 - (5) "Test and lock program" means the Motor Vehicle Test and Lock Program, established in West Virginia Code 17C-5A-3a and administered by the Division of Motor Vehicles.

(b) Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes a bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year and shall be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000), and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of two years or for a period of time conditioned on participation in the test and lock program in accordance with West Virginia Code 17C-5A-3a: provided, that if the person has previously been convicted under this section, the person shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with West Virginia Code 17C-5A-3a. Any jail term imposed pursuant to this subsection shall include actual confinement of not less than twenty-four hours: provided, however, that a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(c) Any person who drives a vehicle on any public highway or private road in this Municipality: (1) while he or she is in an impaired state; or (2) while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent, by weight, is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for up to six months and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months or for a period of time conditioned on participation in the test and lock program in accordance with West Virginia Code 17C-5A-3a: provided, that a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(d) Any person who drives a vehicle on any public highway or private road in this state while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than six months, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000), and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on participation in the test and lock program in accordance with West Virginia Code 17C-5A-3a. A person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(e) Any person who, being a habitual user of narcotic drugs or amphetamines, or any derivative thereof, drives a vehicle on any public highway or private road in this state is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months. A person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(f) Any person who knowingly permits his or her vehicle to be driven on any public highway or private road in this state by any other person who is in an impaired state is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months or for a period of time conditioned on participation in the test and lock program in accordance with West Virginia Code 17C-5A-3a.

(g) Any person who knowingly permits his or her vehicle to be driven on any public highway or private road in this state by any other person who is a habitual user of narcotic drugs or amphetamines, or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months.

- (h) (1) Any person under the age of twenty-one years who drives a vehicle on any public highway or private road in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), and have his or her license to operate a motor vehicle suspended by the Commissioner of the Division of Motor Vehicles for a period of sixty days or for a period of time conditioned on participation in the test and lock program in accordance with West Virginia Code 17C-5A-3a. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or until the person's 21st birthday, whichever period is longer, or for a period of time conditioned on participation in the test and lock program in accordance with West Virginia Code 17C-5A-3a. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the test and lock program as provided in West Virginia Code 17C-5A-3a. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence.
- (2) A. Notwithstanding subdivision (1) of this subsection, a person shall have his or her license to operate a motor vehicle suspended or revoked for a minimum period of one year or for a period of time conditioned on participation in the test and lock program in accordance with West Virginia Code 17C-5A-3a, if the person:

- (i) Has previously been convicted under this subsection and is subsequently convicted of an offense under another subsection of this section; or
 - (ii) Is convicted under this subsection and has previously been convicted of an offense under another subsection of this section.
- B. Nothing in this subdivision permits a shorter period of license revocation, license suspension, or participation in the test and lock program than is mandatory for the specific offense for which the person is convicted.
- (3) A person arrested and charged with an offense under the provisions of this subsection or subsection (b), (c), (d), (e), (f), or (g) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(i) Any person who drives a vehicle on any public highway or private road in this state while he or she is in an impaired state and has within the vehicle one or more persons who are unemancipated minors who have not yet reached their 16th birthday is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than twelve months, and shall be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000), and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on participation in the test and lock program in accordance with West Virginia Code 17C-5A-3a: provided, that such jail term shall include actual confinement of not less than forty-eight hours: provided, however, that a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(j) A person convicted of an offense under this section who has previously been convicted of any offense under this section on one occasion, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor more than one year may be fined not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000) and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for ten years or for a period of time conditioned on participation in the test and lock program in accordance with West Virginia Code 17C-5A-3a: provided, that if the second conviction is for an offense as described in subsection (b) of this section and the subsection creating the offense requires a period of incarceration, period of license revocation, or fine that is greater than what is required for a conviction under this subsection, the greater period of incarceration, period of revocation, or fine shall be imposed: provided, however, that this section does not apply to a second conviction that is subject to a period of license revocation under subsection (h) of this section.

(k) For purposes of subsection (j) of this section relating to second offenses, the following events shall be regarded as offenses and convictions under this section:

- (1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f) or (g), of this section, or under a prior enactment of this section, for an offense which occurred within the 10-year period immediately preceding the date of arrest in the current proceeding;

- (2) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (b), (c), (d), (e), (f) or (g) of this section, which offense occurred within the 10-year period immediately preceding the date of arrest in the current proceeding; and
- (3) Any period of conditional probation imposed pursuant to West Virginia Code 17C-5-2b for violation of subsection (c) of this section, which violation occurred within the 10-year period immediately preceding the date of arrest in the current proceeding.

(l) A person may be charged in a warrant, indictment, or information for a second or subsequent offense, as described in subsection (h) or (j) of this section, if the person has been previously arrested for, or charged with, a violation of this section which is alleged to have occurred within the applicable time period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment or information must set forth the date, location, and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final, or the person has previously had a period of conditional probation imposed pursuant to West Virginia Code 17C-5-2b.

(m) The fact that any person charged with a violation of subsection (b), (c), (d), or (e) of this section, or any person permitted to drive as described under subsection (f) or (g) of this section, is or has been legally entitled to use alcohol, a controlled substance, or a drug does not constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f) or (g) of this section.

(n) The sentences provided in this section upon conviction for a violation of this article are mandatory and are not subject to suspension or probation: provided, that the court may apply the provisions of West Virginia Code 62-11A-1 et seq. to a person sentenced or committed to a term of one year or less for a first offense under this section: provided, however, that the court may impose a term of conditional probation pursuant to West Virginia Code 17C-5-2b to persons adjudicated thereunder. An order for home detention by the court pursuant to the provisions of West Virginia Code 62-11B-1 et seq. may be used as an alternative sentence to any period of incarceration required by this section for a first or subsequent offense: provided, further, that for any period of home incarceration ordered for a person convicted of a second offense under this section, electronic monitoring shall be required for no fewer than five days of the total period of home confinement ordered and the offender may not leave home for those five days notwithstanding the provisions of West Virginia Code 62-11B-5: and provided further, that for any period of home incarceration ordered for a person convicted of a third or subsequent violation of this section, electronic monitoring shall be included for no fewer than ten days of the total period of home confinement ordered and the offender may not leave home for those ten days notwithstanding West Virginia Code 62-11B-5.

(o) A person whose license to operate a motor vehicle has been revoked or suspended by the Commissioner of the Division of Motor Vehicles pursuant to this section must complete a comprehensive safety and treatment program as set forth in West Virginia Code 17C-5A-3 before his or her license to operate a motor vehicle can be reinstated and his or her driving privileges restored.

(p) For any offense for which an alternative revocation period is permitted conditioned upon participation in the test and lock program, an alternative sentence may not be imposed without the consent of the driver.

(q) Upon entering the order of conviction for an offense under this section, or the imposition of conditional probation as provided in West Virginia Code 17C-5-2b, the clerk of the court shall immediately transmit the order to the Commissioner of the Division of Motor Vehicles. (WVaC 17C-5-2)

333.011 PARTICIPATION IN MOTOR VEHICLE ALCOHOL TEST AND LOCK PROGRAM.

- (a) (1) Except as provided in subsection (f) of this section, the court, without entering a judgment of guilt and with the consent of the accused, shall defer further proceedings and impose probation, when:
- A. The person pleads to or is found guilty of the offense defined in Section 333.01(c);
 - B. The person has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to driving under the influence of alcohol, any controlled substance, or any other drug; and
 - C. The person notifies the court within thirty days of his or her arrest of his or her intention to participate in a deferral pursuant to this section.
- (2) If all the requirements in subsection (a)(1) hereof are met, the court, without entering a judgment of guilt, shall defer further proceedings and place the person on probation, the conditions of which shall include that he or she successfully completes the Motor Vehicle Alcohol Test and Lock Program as provided in West Virginia Code 17C-5A-3a. Participation therein shall be for a period of at least 165 days after a fifteen-day suspension of his or her license to operate a motor vehicle and shall be completed within one year thereafter.
- (b) (1) If the prosecuting attorney files a motion alleging that the defendant during the period of the Motor Vehicle Alcohol Test and Lock Program has been removed therefrom by the Division of Motor Vehicles, or has failed to successfully complete the program before making a motion for dismissal pursuant to subsection (c) hereof, the court may issue such process as is necessary to bring the defendant before the court.
- (2) A motion alleging a violation filed pursuant to subsection (c)(1) hereof must be filed during the period of the Motor Vehicle Alcohol Test and Lock Program or, if filed thereafter, must be filed within a reasonable time after the alleged violation was committed.
- (3) When the defendant is brought before the court, the court shall afford the defendant an opportunity to be heard. If the court finds that the defendant has been rightfully removed from the Motor Vehicle Alcohol Test and Lock Program by the Division of Motor Vehicles, the court may order, when appropriate, that the deferral be terminated, and thereupon enter an adjudication of guilt and proceed as otherwise provided.

- (4) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol Test and Lock Program, the defendant waives the appropriate statute of limitations and the defendant's right to a speedy trial under any applicable federal or state constitutional provisions, statutes, or rules of court during the period of enrollment in the program.

(c) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test and Lock Program and complied with its conditions, the defendant may move the court for an order dismissing the charges. This motion shall be supported by affidavit of the defendant and by certification of the Division of Motor Vehicles that the defendant has successfully completed the Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the prosecuting attorney who shall within thirty days after service advise the judge of any objections to the motion, serving a copy of such objections on the defendant or the defendant's attorney. If there are no objections filed within the thirty-day period, the court shall thereafter dismiss the charges against the defendant. If there are objections filed with regard to the dismissal of charges, the court shall proceed as set forth in subsection (b) hereof.

(d) Except as provided herein, unless a defendant adjudicated pursuant to this subsection is convicted of a subsequent violation of Section 333.01 or West Virginia Code 17C-5, discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, except for those provided in West Virginia Code 17C-5A-1 et seq. Except as provided in Section 333.01 regarding subsequent offenses, the effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose other than any inquiry made in connection with any subsequent offense as provided in Section 333.01.

(e) There may be only one discharge and dismissal under this section with respect to any person.

- (f) No person shall be eligible for dismissal and discharge under this section:
 - (1) In any prosecution in which any violation of any other provision of Section 333.01 or West Virginia Code 17C-5 has been charged;
 - (2) If the person holds a commercial driver's license or operates commercial motor vehicles;
 - (3) If the person has previously had his or her license to operate a motor vehicle revoked for any offense under a municipal ordinance of this state or any other state or a statute of the United States or of any other state which has the same elements as an offense described in this article; or
 - (4) If a court entered an order finding that the person refused the secondary chemical test pursuant to West Virginia Code 17C-5-7a.

- (g)
 - (1) After a period of not less than one year, which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this section, the person may apply to the court for an order to expunge all official records of his or her arrest, trial, and conviction, pursuant to this section except for those maintained by the Division of Motor Vehicles: provided, that any person who has previously been convicted of a felony may not make a motion for expungement pursuant to this section.

- (2) If the prosecuting attorney objects to the expungement, the objections shall be filed with the court within thirty days after service of a motion for expungement, and copies of the objections shall be served on the defendant or the defendant's attorney.
- (3) If the objections are filed, the court shall hold a hearing on the objections, affording all parties an opportunity to be heard. If the court determines after a hearing that the person during the period of his or her probation and during the period of time prior to his or her application to the court under this subsection has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.

(h) A person prosecuted for an offense under Section 333.01(c), whose case is disposed of pursuant to the provisions of this section, shall be required to pay the amount of court costs that could be assessed against a person convicted of the offense. Payment of such costs may be made a condition of probation. The costs assessed pursuant to this subsection, whether as a term of probation or not, shall be distributed as other court costs in accordance with West Virginia Code 50-3-2; 14-2A-4; 30-29-4; and 62-5-2, 62-5-7 and 62-5-10.
(WVaC 17C-5-2b)

333.02 RECKLESS DRIVING.

(a) No person shall drive any vehicle upon any street or highway, or upon any residential street, or in any parking area, or upon the ways of any institution of higher education, whether public or private or upon the property of the Board of Education, or upon any property within the Municipal park and public recreation system, in willful or wanton disregard for the safety of persons or property.

(b) The provisions of subsection (a) hereof shall not apply to those areas which have been temporarily closed for racing sport events or which may be set aside by the Municipality within the park and recreation system for exclusive use by motorcycles or other recreational vehicles. (WVaC 17C-5-3)

333.03 HAZARDOUS DRIVING.

(a) No person shall operate a motor vehicle or motorcycle without exercising reasonable and ordinary control over such vehicle.

(b) No person shall operate a motor vehicle or motorcycle in a weaving or zigzag course unless such irregular course is necessary for safe operation or in compliance with law.

(c) No person shall operate a motor vehicle or motorcycle without giving his full time and attention to the operation of such vehicle.

333.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty.)

- (a) Whoever violates Section 333.02 shall for a first offense be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00), or imprisoned not less than five nor more than thirty days; for a second or subsequent offense shall be fined not less than fifty dollars (\$50.00) or more than one thousand dollars (\$1,000), or imprisoned not less than ten nor more than thirty days, or both.
- (b) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a violation of Section 333.02 who in doing so proximately causes another to suffer serious bodily injury shall be confined in jail not less than ten days nor more than thirty days or fined not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000) or both.
- (c) For purposes of subsection (b) of this section, "serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

ARTICLE 334
Open Container Law

- | | |
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| 334.01 Definitions. | 334.03 Procedure on arrest. |
| 334.02 Possession of an open alcoholic beverage container in the passenger area of a motor vehicle. | 334.99 Penalty. |

CROSS REFERENCES

Intoxication or drinking in a public place - see GEN. OFF. 521.06

334.01 DEFINITIONS.

For the purposes of this article, the words or terms defined in this article have the meanings ascribed to them:

- (a) "Alcoholic beverage" means:
 - (1) Alcoholic liquor as defined in West Virginia Code 60-1-5; and
 - (2) Nonintoxicating beer as defined in West Virginia Code 11-16-3.
- (b) "Motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail or rails.
- (c) "Open alcoholic beverage container" means any bottle, can or other receptacle that:
 - (1) Contains any amount of alcoholic beverage; and
 - (2) A. Is open or has a broken seal; or
B. Has had its contents partially removed.
- (d) "Passenger area of a motor vehicle" means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions. For purposes of this article, the passenger area of a motor vehicle does not include:
 - (1) A. A locked glove compartment; or
B. A fixed center console or other similar fixed compartment that is locked;
 - (2) In a motor vehicle that is not equipped with a trunk;
 - A. The area behind the last upright seat; or
 - B. An area not normally occupied by the driver or a passenger; or
 - (3) In a pickup truck that has no trunk, camper top or separate enclosed area other than the cab of the truck, in the area behind the front seat of the truck in a locked case or container located so as to not be readily accessible to the driver or passengers while in their seating positions.

- (e) “Public highway or right-of-way of a public highway” means the entire width between the immediately adjacent to the boundary lines of every way that is publicly maintained, when any part thereof is open to the use of the public for purposes of vehicular travel.
(WVaC 17C-5D-2)

334.02 POSSESSION OF AN OPEN ALCOHOLIC BEVERAGE CONTAINER IN THE PASSENGER AREA OF A MOTOR VEHICLE.

(a) It is unlawful for the operator or a passenger of a motor vehicle to consume any alcoholic beverage in the passenger area of a motor vehicle located on a public highway or right-of-way of a public highway in this Municipality, whether the vehicle is in motion or at rest.

(b) It is unlawful for the operator or a passenger of a motor vehicle to knowingly possess any open alcoholic beverage container in the passenger area of any motor vehicle that is located on a public highway or right-of-way of a public highway in this Municipality, whether the vehicle is in motion or at rest. Possession by a person of one or more open containers in a single criminal occurrence is a single offense.

- (c) The provisions of this section are not applicable to a passenger:
- (1) In the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation including, but not limited to, a bus, taxicab or limousine; or
 - (2) In the living quarters of a motorized or nonmotorized house coach, house trailer, motor home or self-contained camper.
(WVaC 17C-5D-3)

334.03 PROCEDURE ON ARREST.

If a person is arrested for an offense under the provisions of this article, unless the provisions of West Virginia Code 17C-19-3 require that the person arrested be taken immediately before a magistrate for an offense described in that section, the provisions of West Virginia Code Article 17C-19 regarding the issuance of a traffic citation containing a notice to appear applies.
(WVaC 17C-5D-4)

334.99 PENALTY.

Whoever violates any provision of this article shall be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00).
(WVaC 17C-5D-3)

**ARTICLE 335
Speed Restrictions**

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| <p>335.01 Maximum speed limits.</p> <p>335.02 Slow speed.</p> <p>335.03 Special speed limitations.</p> <p>335.04 Racing on streets and highways prohibited.</p> | <p>335.05 Prima facie evidence of speed by radar.</p> <p>335.06 Special speed limitations when meeting or overtaking waste service vehicles.</p> <p>335.99 Penalty.</p> |
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CROSS REFERENCES

See sectional histories for similar State law
 Authority to regulate speed - see W. Va. Code 17C-2-8,
 17C-6-3
 Minimum speed regulations - see W. Va. Code 17C-6-3(a)
 Special speed limitations - see W. Va. Code 17C-6-4
 et seq.
 Use of radar - see W. Va. Code 17C-6-7

335.01 MAXIMUM SPEED LIMITS.

(a) No person may drive a vehicle on a street or highway at a speed greater than is reasonable and prudent under the existing conditions and the actual and potential hazards. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the streets and highways in compliance with legal requirements and the duty of all persons to use due care.

(b) Where no special hazard exists that requires lower speed for compliance with subsection (a) of this section the speed of any vehicle not in excess of the limits specified in this section or established as hereinafter authorized is lawful, but any speed in excess of the limits specified below in this subsection or established as hereinafter authorized is unlawful. The following speed limits apply:

- (1) Fifteen miles per hour in a school zone during school recess or while children are going to or leaving school during opening or closing hours. A school zone is all school property including school grounds and any street or highway abutting such school grounds and extending one hundred twenty-five feet along such street or highway from the school grounds and, in the case of school property not abutting a street or highway but accessed through a right-of-way granted for entrance to school property, a school zone established by an engineering study conducted by the Division of Highways is all school property, including school grounds and any property

within the access right-of-way, and extending one hundred twenty-five feet along the street or highway from the entrance to the access right-of-way. The speed restriction does not apply to vehicles traveling on a controlled-access highway which is separated from the school or school grounds by a fence or barrier approved by the Division of Highways;

- (2) Twenty-five miles per hour in any business or residence district;
- (3) Fifty-five miles per hour on open country highways; except as otherwise provided by this article.

The speeds set forth in this section may be altered as authorized in West Virginia Code Article 17C-6.

(c) The driver of every vehicle shall, consistent with the requirements of subsection (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(d) The speed limit on controlled-access highways and interstate highways, where no special hazard exists that requires a lower speed, shall be not less than fifty-five miles per hour and the speed limits specified in subsection (b) of this section do not apply.
(WVaC 17C-6-1)

335.02 SLOW SPEED.

No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(WVaC 17C-6-3a(a))

335.03 SPECIAL SPEED LIMITATIONS.

(a) Subject to all other speed restrictions of this Traffic Code no person shall drive a vehicle not designed for carrying passengers and equipped with pneumatic tires at a speed in excess of:

- (1) Twenty miles per hour in any business district;
- (2) Twenty-five miles per hour in any residence district;
- (3) Forty miles per hour on open country highway;
- (4) Trucks licensed at 8,000 pounds gross vehicle weight or less shall be permitted the same speed as passenger cars.

(WVaC 17C-6-4)

(b) No person shall drive any vehicle equipped with other than pneumatic tires at a speed greater than a maximum of ten miles per hour.

No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a street or highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is so signposted.

(WVaC 17C-6-5)

335.04 RACING ON STREETS AND HIGHWAYS PROHIBITED.

No person shall engage in, or aid or abet by serving as lookout or timer or in any other capacity whatever, any speed race, as defined herein, on any public street or highway in this Municipality. For the purposes of this section, "speed race" means:

- (a) The operation of a motor vehicle in speed acceleration competition with another motor vehicle or motor vehicles; or
 - (b) The operation of a motor vehicle in speed acceleration competition against time; or
 - (c) The operation of a motor vehicle in speed competition with another motor vehicle or motor vehicles where the speed exceeds the lawful speed limit.
- (WVaC 17C-6-8(a))

335.05 PRIMA FACIE EVIDENCE OF SPEED BY RADAR.

The speed of a motor vehicle may be proved by evidence obtained by use of any device designed to measure and indicate or record the speed of a moving object by means of microwaves or reflected light, when such evidence is obtained by members of the Police Department. The evidence so obtained shall be accepted as prima facie evidence of the speed of such vehicle.

(WVaC 17C-6-7)

335.06 SPECIAL SPEED LIMITATIONS WHEN MEETING OR OVERTAKING WASTE SERVICE VEHICLES.

(a) No person shall drive a motor vehicle and meet or overtake from either direction a stopped waste service vehicle at a speed in excess of fifteen miles per hour.

(b) For purposes of this section, "waste service vehicle" means any garbage collection vehicle, including a vehicle collecting recyclables or yard waste, which is used for curbside collection, makes frequent stops and is not fully automated.

(c) The speed limitation set forth in subsection (a) of this section applies only under the following circumstances:

- (1) The waste service vehicle is identifiable as a waste service vehicle based on the vehicle configuration or markings on the vehicle;
- (2) The waste service vehicle operator is giving a visual signal by means of a stationary sign to warn of the presence of workers or must use flashing lights as permitted in this code to caution other drivers; and
- (3) The waste service vehicle is not located on a private driveway, controlled access highway, interstate highway, turnpike or road or highway with a center line and more than two lanes.

(WVaC 17C-6-11)

335.99 PENALTY.

(a) General Article Penalty. Whoever violates any provision of this article for which no other penalty is provided shall be fined not more than one hundred dollars (\$100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars (\$200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars (\$500.00).

(b) Speeding.

- (1) Unless otherwise provided in this subsection (b) hereof, any person who violates the provisions of Section 335.01 shall be fined not more than one hundred dollars (\$100.00); upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars (\$200.00); and, upon a third or subsequent conviction within two years thereafter, shall be fined not more than five hundred dollars (\$500.00); provided, that if such third or subsequent conviction is based upon a violation of the provisions of Section 335.01 where the offender exceeded the speed limit by fifteen miles per hour or more, then the person shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.
- (2) Any person who violates the provisions of Section 335.01(b)(1) shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); provided, that if such conviction is based upon a violation of the provisions of Section 335.01(b)(1) where the offender exceeded the speed limit by fifteen miles per hour or more in the presence of one or more children, then the person shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both: Provided, that if the signage required by Section 335.01(b)(1) is not present in the school zone at the time of the violation, then any person who violates said provision shall be fined not more than twenty-five dollars (\$25.00).
(WVaC 17C-6-1)

(c) Street Racing. Whoever violates Section 335.04 shall be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00); for a second offense fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by imprisonment for not less than six days nor more than thirty days, or both; and for a third and each subsequent offense fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000), or by imprisonment for not more than thirty days or both. For the purposes of this section, a forfeiture of bail or collateral deposited to secure such person's appearance in court, which forfeiture has not been vacated, shall be equivalent to a final conviction. If at the time of any violation of the provisions of Section 335.04 by any person as an operator of a motor vehicle, such person was not entitled to operate a motor vehicle in this State because his operator's or chauffeur's license, or privilege to drive in this State if such person be a nonresident, had earlier been suspended or removed, then in addition to the penalties provided for in this section, the provisions of Section 351.10 shall be applicable.
(WVaC 17C-6-8)

(d) Waste Service Vehicles. Any person who violates the provisions of Section 335.06 shall be fined not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00). If the person convicted of violating Section 335.06 exceeded the speed limit by fifteen miles per hour or more or caused serious injury or death to a service vehicle worker, then the person shall be fined not less than three hundred dollars (\$300.00) nor more than one thousand dollars (\$1,000) or confined in jail for not more than thirty days, or both.
(WVaC 17C-6-11)

ARTICLE 337
Driving on Right; Passing

<p>337.01 Driving upon right side of roadway; exceptions.</p> <p>337.02 Passing to right when proceeding in opposite directions.</p> <p>337.03 Overtaking, passing to left; driver's duties.</p> <p>337.04 Overtaking and passing upon right.</p> <p>337.05 Overtaking, passing to left of center.</p> <p>337.06 Additional restrictions on driving upon left side of roadway.</p>	<p>337.07 Hazardous or no passing zones.</p> <p>337.08 One-way roadways and rotary traffic islands.</p> <p>337.09 Driving in marked lanes or continuous lines of traffic.</p> <p>337.10 Following too closely.</p> <p>337.11 Driving upon divided roadways.</p> <p>337.12 Entering and exiting controlled-access highway.</p> <p>337.99 Penalty.</p>
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CROSS REFERENCES

See sectional histories for similar State law
Authority to establish one-way streets - see W. Va.
Code 17C-2-8(4)

337.01 DRIVING UPON RIGHT SIDE OF ROADWAY; EXCEPTIONS.

(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

- (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
- (2) When the right half of a roadway is closed to traffic while under construction or repair;
- (3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or
- (4) Upon a roadway designated and signposted for one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(WVaC 17C-7-1)

337.02 PASSING TO RIGHT WHEN PROCEEDING IN OPPOSITE DIRECTIONS.

Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main-traveled portion of the roadway as nearly as possible.

(WVaC 17C-7-2)

337.03 OVERTAKING, PASSING TO LEFT; DRIVER'S DUTIES.

The following rules govern the overtaking and passing of vehicles proceeding in the same direction subject to these limitations, exceptions, and special rules hereinafter stated:

- (a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give an audible signal and pass to the left of the overtaken vehicle at a safe distance and may not again drive to the right side of the roadway until safely clear of the overtaken vehicle.
- (b) The driver of a vehicle overtaking a bicycle traveling in the same direction shall pass to the left of the bicycle at a distance of not less than three feet at a careful and reduced speed, and may not again drive to the right side of the roadway until safely clear of the overtaken bicycle.
- (c) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and may not increase the speed of his or her vehicle until completely passed by the overtaking vehicle. (WVaC 17C-7-3)

337.04 OVERTAKING AND PASSING UPON RIGHT.

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

- (1) When the vehicle overtaken is making or about to make a left turn;
- (2) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction;
- (3) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

(WVaC 17C-7-4)

337.05 OVERTAKING, PASSING TO LEFT OF CENTER.

No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within 100 feet of any vehicle approaching from the opposite direction.

(WVaC 17C-7-5)

337.06 ADDITIONAL RESTRICTIONS ON DRIVING UPON LEFT SIDE OF ROADWAY.

(a) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

- (1) When approaching the crest of a grade or upon a curve in the street or highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;
- (2) When approaching within 100 feet of or traversing any intersection or railroad grade crossing;
- (3) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway.
(WVaC 17C-7-6)

337.07 HAZARDOUS OR NO PASSING ZONES.

When signs or markings are in place and clearly visible to an ordinarily observant person indicating that overtaking and passing or driving to the left of the roadway would be especially hazardous, every driver of a vehicle shall obey the directions thereof.
(WVaC 17C-7-7)

337.08 ONE-WAY ROADWAYS AND ROTARY TRAFFIC ISLANDS.

(a) Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.

(b) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.
(WVaC 17C-7-8(b), (c))

337.09 DRIVING IN MARKED LANES OR CONTINUOUS LINES OF TRAFFIC.

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

- (a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.
- (b) Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane which is clearly marked as a left turn lane except in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.
- (c) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign.
(WVaC 17C-7-9)

337.10 FOLLOWING TOO CLOSELY.

(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent having due regard for the speed of such vehicles and the traffic upon and the condition of the street or highway.

(b) No operator of any motor truck, registered for a gross weight of more than 8,000 pounds, bus, special mobile equipment or any motor vehicle drawing another vehicle operating upon any roadway outside of a business or residence district, shall follow within 200 feet of another motor truck, bus, special mobile equipment or any motor vehicle drawing another vehicle; provided that this provision shall not be construed to:

- (1) Prevent overtaking and passing;
- (2) Apply upon any lane specially designated for the use of motor trucks or combinations of vehicles, or within any section of a roadway posted or marked as a "no-passing zone";
- (3) Apply to any convoy of vehicles of the military service of the United States or of this State; and
- (4) Apply to funeral processions.

(c) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to:

- (1) Funeral processions; or
- (2) Any convoy of vehicles of the military service of the United States or of this State.

(WVaC 17C-7-10)

337.11 DRIVING UPON DIVIDED ROADWAYS.

Whenever any street or highway has been divided into two roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection established by public authority.

(WVaC 17C-7-11)

337.12 ENTERING AND EXITING CONTROLLED-ACCESS HIGHWAY.

No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

(WVaC 17C-7-12)

337.99 PENALTY.

Whoever violates any provision of this article shall be fined not more than one hundred dollars (\$100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars (\$200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars (\$500.00).

ARTICLE 339
Turning and Starting; Signals

339.01 Conformity with provisions required. 339.02 Right turns. 339.03 Left turns on two-way roadways. 339.04 Left turns on other than two-way roadways. 339.05 Specified turns at intersections. 339.06 "U" turns restricted. 339.07 Starting vehicle.	339.08 Signals before changing course, turning or stopping. 339.09 Signals to be given by hand and arm or signal device. 339.10 Hand and arm signals. 339.99 Penalty.
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CROSS REFERENCES

See sectional histories for similar State law
 Authority to regulate the turning of vehicles - see
 W. Va. Code 17C-2-8(a)(9)
 Authority to specify different courses for turns -
 see W. Va. Code 17C-8-5

339.01 CONFORMITY WITH PROVISIONS REQUIRED.

The driver of a vehicle intending to turn at an intersection shall do so as provided in this article.
 (WVaC 17C-8-1)

339.02 RIGHT TURNS.

Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.
 (WVaC 17C-8-2)

339.03 LEFT TURNS ON TWO-WAY ROADWAYS.

At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the centerline thereof and by passing to the right of such centerline where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the centerline of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.
 (WVaC 17C-8-3)

339.04 LEFT TURNS ON OTHER THAN TWO-WAY ROADWAYS.

At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

(WVaC 17C-8-4)

339.05 SPECIFIED TURNS AT INTERSECTIONS.

Council or other designated traffic authority may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this article be traveled by vehicles turning at an intersection, and when markers, buttons or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons or signs. (WVaC 17C-8-5)

339.06 "U" TURNS RESTRICTED.

(a) No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within 500 feet.

(WVaC 17C-8-6)

(b) No vehicle shall be turned so as to proceed in the opposite direction within an intersection, or upon any street in a business district, or upon a freeway, expressway or controlled-access highway, or where authorized signs are erected to prohibit such movement, or at any other location unless such movement can be made with reasonable safety to other users of the street and without interfering with the safe operation of any traffic that may be affected by such movement.

339.07 STARTING VEHICLE.

No person shall start a vehicle which is stopped, standing or parked unless and until such movement can be made with reasonable safety.

(WVaC 17C-8-7)

339.08 SIGNALS BEFORE CHANGING COURSE, TURNING OR STOPPING.

(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in Sections 339.02 to 339.05, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.
(WVaC 17C-8-8)

339.09 SIGNALS TO BE GIVEN BY HAND AND ARM OR SIGNAL DEVICE.

Any stop or turn signal when required herein shall be given either by means of the hand and arm or by a signal lamp or lamps or mechanical signal device, but when a vehicle is so constructed or loaded that hand-and-arm signal would not be visible both to the front and rear of such vehicle then such signals must be given by such a lamp or lamps or signal device.
(WVaC 17C-8-9)

339.10 HAND AND ARM SIGNALS.

All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

- (a) Left Turn: Hand and arm extended horizontally.
 - (b) Right Turn: Hand and arm extended upward.
 - (c) Stop or Decrease Speed: Hand and arm extended downward.
- (WVaC 17C-8-10)

339.99 PENALTY.

Whoever violates any provision of this article shall be fined not more than one hundred dollars (\$100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars (\$200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars (\$500.00).

ARTICLE 341
Right of Way

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| <p>341.01 Right of way at intersections.</p> <p>341.02 Right of way when turning left.</p> <p>341.03 Right of way at through street or highway or stop intersections.</p> | <p>341.04 Driving onto roadway from private road or driveway; duty to yield.</p> <p>341.05 Right of way of emergency vehicle.</p> <p>341.06 Turning into private driveway, alley or building.</p> <p>341.99 Penalty.</p> |
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CROSS REFERENCES

See sectional histories for similar State law
Authority to designate through streets and stop intersections - see W. Va. Code 17C-2-8(a)(6), 17C-12-5

341.01 RIGHT OF WAY AT INTERSECTIONS.

(a) The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different street or highway.

(b) When two vehicles enter an intersection from a different street or highway at approximately the same time the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(c) The right-of-way rules declared in subsections (a) and (b) hereof are modified at through streets or highways and otherwise as hereinafter stated in this article.
(WVaC 17C-9-1)

341.02 RIGHT OF WAY WHEN TURNING LEFT.

The driver of a vehicle within an intersection intending to turn to the left shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but such driver, having so yielded and having given a signal when and as required by this Traffic Code may make such left turn and the drivers of all other vehicles approaching the intersection from the opposite direction shall yield the right of way to the vehicles making the left turn.
(WVaC 17C-9-2)

341.03 RIGHT OF WAY AT THROUGH STREET OR HIGHWAY OR STOP INTERSECTIONS.

(a) The driver of a vehicle shall stop as required by Section 343.05 at the entrance to a through street or highway and shall yield the right of way to other vehicles which have entered the intersection from such through streets or highways or which are approaching so closely on such through street or highway as to constitute an immediate hazard but the driver having so yielded may proceed.

(b) The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through street or highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.
(WVaC 17C-9-3)

341.04 DRIVING ONTO ROADWAY FROM PRIVATE ROAD OR DRIVEWAY; DUTY TO YIELD.

The driver of a vehicle about to enter or cross a street or highway from a private road or driveway shall yield the right of way to all vehicles approaching on the street or highway.
(WVaC 17C-9-4)

341.05 RIGHT OF WAY OF EMERGENCY VEHICLE.

(a) Upon the immediate approach of an authorized emergency vehicle equipped with at least one flashing lighted lamp of a color authorized by Section 345.18, which is visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle other than a police vehicle when operated as an authorized emergency vehicle, and when the driver is giving audible signal by siren, exhaust whistle or bell, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the street or highway.
(WVaC 17C-9-5)

341.06 TURNING INTO PRIVATE DRIVEWAY, ALLEY OR BUILDING.

The driver of a vehicle intending to turn into a private road or driveway, alley or building from a public street or highway shall be governed by the following rules:

- (a) Approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.
- (b) Upon a roadway where traffic is proceeding in opposite directions, approach for a left turn and a left turn shall be made from that portion of the right half of the roadway nearest the center line thereof.

- (c) Upon a roadway where traffic is restricted to one direction, approach for a left turn and a left turn shall be made as close as practicable to the left-hand curb or edge of the roadway.

It shall be the duty of the driver of any vehicle entering a private road or driveway, alley or building to yield the right of way to pedestrians lawfully using the sidewalk or sidewalk area extending across any alleyway, private road, driveway or building.

341.99 PENALTY.

Whoever violates any provision of this article shall be fined not more than two hundred dollars (\$200.00); upon a second conviction within one year thereafter shall be fined not more than three hundred dollars (\$300.00); and upon a third or subsequent conviction, shall be fined not more than one thousand dollars (\$1,000).

(WVaC 17C-9-6)

ARTICLE 343
Special Stops Required

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| 343.01 Driving across grade crossing. | 343.07 Stopping for school bus; signs and warning lights; sale of school bus. |
| 343.02 Stops at dangerous grade crossings. | 343.08 Stopping for passenger van; signs and warning lights. |
| 343.03 Stopping at grade crossing. | 343.09 Obstructing intersection or crosswalk. |
| 343.04 Moving heavy equipment across grade crossings. | 343.99 Penalty. |
| 343.05 Through streets and stop intersections. | |
| 343.06 Driving onto roadway from place other than roadway; stopping at sidewalk. | |

CROSS REFERENCES

See sectional histories for similar State law
Authority to establish through streets and stop intersections - see W. Va. Code 17C-2-8(a)(6)

343.01 DRIVING ACROSS GRADE CROSSING.

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

- (1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
- (2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;
- (3) A railroad train approaching within approximately 1,500 feet of the street or highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;
- (4) Any approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(b) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed. (WVaC 17C-12-1)

343.02 STOPS AT DANGEROUS GRADE CROSSINGS.

Council or other designated traffic authority with the approval of the State Commissioner of Highways is hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall proceed only upon exercising due care. (WVaC 17C-12-2)

343.03 STOPPING AT GRADE CROSSING.

(a) Except as provided in subsection (f) of this section, the driver of a commercial motor vehicle specified in subsection (b) of this section shall not cross a railroad track or tracks at grade unless he or she first:

- (1) Stops the commercial motor vehicle within fifty feet of, and not closer than fifteen feet to, the tracks;
- (2) Thereafter, listens and looks in each direction along the tracks for an approaching train; and
- (3) Ascertains that no train is approaching.

When it is safe to do so, the driver may drive the commercial motor vehicle across the tracks in a gear that permits the commercial motor vehicle to complete the crossing without change of gears. The driver shall not shift gears while crossing the tracks.

(b) The following commercial vehicles are required to stop at railroad tracks or tracks at grade:

- (1) Every bus transporting passengers;
- (2) Every commercial motor vehicle transporting any quantity of a United States Department of Transportation defined division 2.3 chlorine;
- (3) Every commercial motor vehicle which, in accordance with United States Department of Transportation regulations, is marked or placarded and is required to stop in accordance with 49 C.F.R. part §392.10(a)(3)(2001);
- (4) Every cargo tank motor vehicle, loaded or empty, used for the transportation of any hazardous material, as defined in Federal Department of Transportation hazardous materials rules, 49 C.F.R. parts §107 through §180 (2001);
- (5) Every cargo tank motor vehicle transporting a commodity which, at the time of loading, has a temperature above its flashpoint as determined by 49 C.F.R. §173.120 (2001); and
- (6) Every cargo tank motor vehicle, whether loaded or empty, transporting any commodity exemption in accordance with 49 C.F.R. part §107 subpart B (2001).

(c) Any vehicle owned by an employer which, in carrying on the employer's business or in carrying employees to and from work, carries more than six employees of the employer is required to stop at all railroad tracks or tracks at grade, in accordance with subsection (a) of this section.

(d) All drivers of commercial motor vehicles not required to stop at railroad tracks or tracks at grade as provided in subsection (a) of this section may not cross a railroad track or tracks at grade unless he or she first slows the commercial motor vehicle to a speed which will permit the commercial motor vehicle to be stopped before reaching the nearest rail of the railroad crossing and permit exercise of due caution to ascertain that the tracks are clear of an approaching train.

(e) All drivers of commercial motor vehicles may not proceed to cross a railroad crossing unless there is sufficient space to drive completely through the crossing without stopping and the vehicle has sufficient undercarriage clearance to drive completely through the crossing without stopping.

(f) No stop need be made at:

- (1) Any crossing where a police officer, crossing flagger or a traffic-control signal directs traffic to proceed;
- (2) A streetcar crossing, or railroad tracks used exclusively for industrial switching purposes within a business district, as defined in 49 C.F.R. §390.5 (2000);
- (3) A railroad grade crossing controlled by a functioning highway traffic signal transmitting a green indication which, under local law permits the commercial motor vehicle to proceed across the track without slowing or stopping; or
- (4) A railroad grade crossing which is marked with a sign indicating that the rail line is out of service.

(g) Any person driving a vehicle specified in this section or a vehicle that requires a commercial driver's license who fails to comply with the requirements of this section is guilty of a misdemeanor. Provided, that if the electric or mechanical signal device is malfunctioning, this subsection shall not apply.

(WVaC 17C-12-3)

343.04 MOVING HEAVY EQUIPMENT ACROSS GRADE CROSSINGS.

(a) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller or any equipment or structure having a normal operating speed of ten or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event, of less than nine inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(b) Notice of any such intended crossing shall be given to a station agent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.

(c) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet nor more than fifty feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(d) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction. (WVaC 17C-12-4)

343.05 THROUGH STREETS AND STOP INTERSECTIONS.

(a) Council or other designated traffic authority may designate through streets or highways and erect stop signs at specified entrances thereto or may designate any intersection as a stop intersection and erect like signs at one or more entrances to such intersection.

(b) Every such sign shall bear the word "Stop" in letters not less than six inches in height and such sign shall at nighttime be rendered luminous by steady or flashing internal illumination, or by a fixed floodlight projected on the face of the sign, or by efficient reflecting elements on the face of the sign.

(c) Every stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the roadway.

(d) Every driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or in the event there is no crosswalk shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting street or highway where the driver has a view of approaching traffic on the intersecting street or highway before entering the intersection except when directed to proceed by a police officer or traffic control signal. (WVaC 17C-12-5)

343.06 DRIVING ONTO ROADWAY FROM PLACE OTHER THAN ROADWAY; STOPPING AT SIDEWALK.

The driver of a vehicle within a business or residence district emerging from any alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or private driveway, and shall yield the right of way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right of way to all vehicles approaching on such roadway. (WVaC 17C-12-6)

343.07 STOPPING FOR SCHOOL BUS; SIGNS AND WARNING LIGHTS; SALE OF SCHOOL BUS.

(a) The driver of a vehicle upon meeting or overtaking from either direction any school bus which has stopped for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on such school bus flashing warning signal lights, as referred to in West Virginia Code 17C-12-8 and such driver shall not proceed until such school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no longer actuated. This section applies wherever the school bus is receiving or discharging children, including, but not limited to, any street, highway, parking lot, private road or driveway: provided, that the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a school bus which is on a different roadway or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

(b) Where the actual identity of the operator of a motor vehicle operated in violation of subsection (a) of this section is unknown but the license plate number of the motor vehicle is known, it may be inferred that the operator was an owner or lessee of the motor vehicle for purposes of the probable cause determination. Where there is more than one registered owner or lessee, the inference created by this subsection shall apply to the first listed owner or lessee as found on the motor vehicle registration: Provided, that a person charged with a violation of subsection (a) of this section under the provisions of this subsection where the sole evidence against the owner or lessee is the presence of the vehicle at the scene at the time of the offense shall only be subject to the applicable fine set forth in Section 343.99(b).

(c) Service of process of a complaint issued pursuant to subsection (b) of this section shall be effected consistent with West Virginia Rule of Criminal Procedure 4.

(d) Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "school bus" in letters not less than eight inches in height. When a contract school bus is being operated upon a street or highway for purposes other than the actual transportation of children either to or from school, all markings thereon indicating "school bus" shall be covered or concealed. Any school bus sold or transferred to another owner by a county board of education, agency or individual, shall have all flashing warning lights disconnected and all lettering removed or permanently obscured, except when sold or transferred for the transportation of school children. (WVaC 17C-12-7)

343.08 STOPPING FOR PASSENGER VAN; SIGNS AND WARNING LIGHTS.

(a) Every passenger van used for the transportation of children shall bear upon the front and rear thereof a plainly visible sign containing the warning "Caution: Loading and Unloading Passengers" in letters not less than six inches in height. Every such passenger van shall be equipped with either flashing warning signal lights as are contemplated and referred to in West Virginia Code 17C-12-8, or a red caution flag which the driver or some other adult must use by exiting the passenger van and displaying while assisting in the loading or unloading of passengers. Such vehicles may also be equipped with a white flashing strobotron warning light that meets the requirements set forth in West Virginia Code 17C-15-26(e).

(b) The driver of a vehicle upon meeting or overtaking from any direction any passenger van which has stopped for the purpose of loading or unloading passengers shall stop his or her vehicle before reaching the passenger van when there is in operation on the passenger van flashing warning signal lights or when an adult is outside the passenger van with a red caution flag and assisting with the loading or unloading of passengers. The driver of a vehicle may not proceed until he or she is signaled by the passenger van driver to proceed, the passenger van flashing signal lights are no longer actuated, or the passenger resumes motion. This section applies whenever the passenger van is loading or unloading children on any street, highway, parking lot, private road or driveway: provided, that the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a passenger van which is on a different roadway or adjacent to the highway and where pedestrians are not permitted to cross the roadway. (WVaC 17C-12-17a)

343.09 OBSTRUCTING INTERSECTION OR CROSSWALK.

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

343.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty if no specific penalty is provided.)

- (a) Driving Onto Roadway From Place Other Than Roadway. Whoever violates Section 343.06 shall be fined not more than one hundred dollars (\$100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars (\$200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars (\$500.00).
- (b) Stopping for School Bus. Any driver acting in violation of Section 343.07(a) for a first offense, shall be fined not less than five hundred dollars (\$500.00) or more than one thousand dollars (\$1,000), or confined in jail not more than thirty days, or both fined and confined. Upon conviction of a second violation of Section 343.07(a), the driver shall be fined not less than one thousand dollars (\$1,000) nor more than fifteen hundred dollars (\$1,500), or confined in jail not more than thirty days, or both fined and confined. Upon conviction of a third or subsequent violation of Section 343.07(a), the driver shall be fined two thousand dollars (\$2,000) and confined not less than forty-eight hours in jail but not more than thirty days.
- (c) Stopping For Passenger Van. Any driver acting in violation of Section 343.08(b) shall be fined not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), or imprisoned not more than thirty days, or both. If the identity of the driver cannot be ascertained, then any such owner or lessee of the vehicle in violation of Section 343.08(b) shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00): provided, however, that such conviction shall not subject such owner or lessee to further administrative or other penalties for such offense, notwithstanding other provisions of this Traffic Code to the contrary.

ARTICLE 345
Safety and Equipment

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| 345.01 | Driving unsafe vehicles; application; farm and road equipment exceptions. | 345.18 | Special restrictions on lights. |
| 345.02 | When lighted lights required. | 345.19 | Motor vehicle or motor-cycle brakes. |
| 345.03 | Measurement of distances and heights. | 345.20 | Inspection of brakes on motorcycles, motor-driven cycles and mopeds. |
| 345.04 | Headlights on motor vehicles and motor-cycles. | 345.21 | Horn, siren and theft alarm signal. |
| 345.05 | Tail light; illumination of rear license plate. | 345.22 | Muffler; muffler cutout; excessive smoke, gas or noise. |
| 345.06 | Red light or red flag on extended loads. | 345.23 | Rear-view mirror. |
| 345.07 | Lights on parked or stopped vehicles. | 345.24 | Windshield to be unobstructed; windshield wiper. |
| 345.08 | Lights on slow-moving vehicles. | 345.25 | Tire equipment restrictions. |
| 345.09 | Spotlights and auxiliary lights. | 345.26 | Safety glass in motor vehicles. |
| 345.10 | Signal lamps and signal devices. | 345.27 | Vehicles transporting explosives. |
| 345.11 | Cowl, fender and back-up lights; flashing hazard lights. | 345.28 | Video screens and monitors, television receivers in view of driver prohibited. |
| 345.12 | Multiple-beam road-lighting equipment requirements. | 345.29 | Safety equipment for motorcyclists, motor-cycles, motor-driven cycles and mopeds. |
| 345.13 | Use of headlight beams. | 345.30 | Certification labels on mopeds. |
| 345.14 | Single-beam road-lighting equipment. | 345.31 | Child passenger safety devices required; child safety seats and booster seats. |
| 345.15 | Lights on motorcycles, motor-driven cycles and mopeds. | 345.32 | Certificate of inspection and approval. |
| 345.16 | Alternate road-lighting equipment. | 345.33 | Alteration of motor vehicles; bumper height limits. |
| 345.17 | Number of driving lights required or permitted. | 345.34 | Sun screening devices. |
| | | 345.35 | Operation of vehicles with safety belts. |
| | | 345.99 | Penalty. |

CROSS REFERENCES

See sectional histories for similar State law
Obscured light on vehicles in combination - see
W. Va. Code 17C-15-13
Warning devices for commercial vehicles - see
W. Va. Code 17C-15-39
Bicycle equipment - see TRAF. Art. 373

345.01 DRIVING UNSAFE VEHICLES; APPLICATION; FARM AND ROAD EQUIPMENT EXCEPTIONS.

(a) No person shall drive or move and no owner shall cause or knowingly permit to be driven or moved on any street or highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this article, or which is equipped in any manner in violation of this article, or for any person to do any act forbidden or fail to perform any act required under this article.

(b) Nothing contained in this article shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this article.

(c) The provisions of this article with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers or farm tractors except as herein made applicable. Every farm tractor equipped with an electric lighting system shall at all times mentioned in Section 345.02 display a red tail lamp and either multiple-beam or single-beam head lamps meeting the requirements of Section 345.02.
(WVaC 17C-15-1)

345.02 WHEN LIGHTED LIGHTS REQUIRED.

Every vehicle other than a school bus, motorcycle, motor-driven cycle or moped operated upon a street or highway within this Municipality at any time from sunset to sunrise or during fog, smoke, rain or other unfavorable atmospheric conditions, or at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the street or highway at a distance of 500 feet ahead shall display lighted head lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as provided for in Section 345.07(c). Every school bus, motorcycle, motor-driven cycle and moped shall display lighted head lamps at all times when upon the street or highway. Lighted lamps and other lighting devices that consist of multiple light-emitting diodes (LEDs) or other illuminating components that function as a single lighting unit are deemed to be functional so long as at least sixty-six percent of the LEDs or other illuminating components are functional; provided, that the lighted lamps or lighting devices must still project sufficient illumination to satisfy all other requirements contained in this article. (WVaC 17C-15-2)

345.03 MEASUREMENT OF DISTANCES AND HEIGHTS.

(a) Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible such provisions shall apply during the times stated in Section 345.02 in respect to a vehicle without load when upon a straight, level, unlighted street or highway under normal atmospheric conditions unless a different time or condition is expressly stated.

(b) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.
(WVaC 17C-15-3)

345.04 HEADLIGHTS ON MOTOR VEHICLES AND MOTORCYCLES.

(a) Every motor vehicle other than a motorcycle, motor-driven cycle or moped shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this article.

(b) Every motorcycle, motor-driven cycle and moped shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations of this article.

(c) Every head lamp upon every motor vehicle, including every motorcycle, motor-driven cycle and moped, shall be located at a height measured from the center of the head lamp of not more than fifty-four inches nor less than twenty-four inches to be measured as set forth in Section 345.03.
(WVaC 17C-15-4)

345.05 TAIL LIGHT; ILLUMINATION OF REAR LICENSE PLATE.

(a) Every motor vehicle, trailer or semitrailer, and any other vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least one tail lamp mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of 500 feet to the rear, provided that in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified.

(b) Every tail lamp upon every vehicle shall be located at a height of not more than sixty inches nor less than twenty inches to be measured as set forth in Section 345.03(b).

(c) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.
(WVaC 17C-15-5)

345.06 RED LIGHT OR RED FLAG ON EXTENDED LOADS.

Whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in Section 345.02, a red light or lantern plainly visible from a distance of at least 500 feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than twelve inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.
(WVaC 17C-15-14)

345.07 LIGHTS ON PARKED OR STOPPED VEHICLES.

(a) Whenever a vehicle is lawfully parked upon a street or highway during the hours between sunset and sunrise and in the event there is sufficient light to reveal any person or object within a distance of 500 feet upon such street or highway no lights need be displayed upon such parked vehicle.

(b) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between sunset and sunrise and there is not sufficient light to reveal any person or object within a distance of 500 feet upon such street or highway, such vehicle so parked or stopped shall be equipped with one or more lamps meeting the following requirements: At least one lamp shall display a white or amber light visible from a distance of 500 feet to the front of the vehicle, and the same lamp or at least one other lamp shall display a red light visible from a distance of 500 feet to the rear of the vehicle, and the location of such lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motorcycle, motor-driven cycle or moped.

(c) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.
(WVaC 17C-15-15)

345.08 LIGHTS ON SLOW-MOVING VEHICLES.

All vehicles including animal-drawn vehicles and including those referred to in Section 345.01(c) not hereinbefore specifically required to be equipped with lamps, shall at the times specified in Section 345.02 be equipped with at least one lighted lamp or lantern exhibiting a white light visible from a distance of 500 feet to the front of such vehicle and with a lamp or lantern exhibiting a red light visible from a distance of 500 feet to the rear.
(WVaC 17C-15-16)

345.09 SPOTLIGHTS AND AUXILIARY LIGHTS.

For the purposes of this section, a lamp or lighting device meets the requirements specified below so long as any portion of the illuminating surface of the lamp or lighting device is within the specified range.

All lamps and lighting devices covered in this section may be installed so that the entire lamp or lighting device exceeds forty-two inches above the level surface upon which the vehicle stands so long as such lamps or lighting devices are either covered or dimmable.

(a) Spot Lamps. Any motor vehicle except a public utility company maintenance vehicle may be equipped with not more than one spot lamp and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than 100 feet ahead of the vehicle. A public utility company maintenance vehicle may be equipped with more than one spot lamp but all lighted spot lamps shall be aimed and used in conformity to the requirements of this subsection.

(b) Fog Lamps. Any motor vehicle may be equipped with not more than two fog lamps mounted on the front at a height not less than twelve inches nor more than thirty inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five feet ahead project higher than a level of four inches below the level of the center of the lamp from which it comes.

- (c) Auxiliary Passing Lamp. Any motor vehicle may be equipped with not more than two auxiliary passing lamps mounted on the front at a height not less than twenty-four inches nor more than forty-two inches above the level surface upon which the vehicle stands and every auxiliary passing lamp shall meet the requirements and limitations set forth in this article.
- (d) Auxiliary Driving Lamp. Any motor vehicle may be equipped with not more than two auxiliary driving lamps mounted on the front at a height not less than sixteen inches nor more than forty-two inches above the level surface upon which the vehicle stands and every such auxiliary driving lamp shall meet the requirements and limitations set forth in this article.
- (e) Roof-Mounted Off-Road Light Bar Lighting Device. Any motor vehicle may be equipped with a roof-mounted off-road light bar lighting device comprised of multiple lamps: provided, that whenever the vehicle is operated or driven upon any road or highway, the roof-mounted off-road light bar lighting device shall be turned off while the vehicle is being operated on any road or highway.
(WVaC 17C-15-17)

345.10 SIGNAL LAMPS AND SIGNAL DEVICES.

- (a) Any motor vehicle may be equipped and when required under this Traffic Code shall be equipped with the following signal lamps or devices:
 - (1) A stop lamp on the rear which shall emit a red or yellow light and which shall be actuated upon application of the service (foot) brake and which may but need not be incorporated with a tail lamp.
 - (2) A lamp or lamps or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible both from the front and rear.
- (b) A stop lamp shall be plainly visible and understandable from a distance of 100 feet to the rear both during normal sunlight and at nighttime and signal lamp or lamps indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of 100 feet both to the front and rear. When a vehicle is equipped with a stop lamp or other signal lamps, such lamp or lamps shall at all times be maintained in good working condition. No stop lamp or signal lamp shall project a glaring or dazzling light.
- (c) All mechanical signal devices shall be self-illuminated when in use at the times mentioned in Section 345.02. (WVaC 17C-15-18)

345.11 COWL, FENDER AND BACK-UP LIGHTS; FLASHING HAZARD LIGHTS.

- (a) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.
- (b) Any motor vehicle may be equipped with not more than one running-board courtesy lamp on each side thereof which shall emit a white or amber light without glare.
- (c) All motor vehicles shall be equipped with a minimum of at least two functioning back-up lamps either separately or in combination with other lamps, unless the vehicle was originally equipped with one lamp. Any such back-up lamp shall not be lighted when the motor vehicle is in forward motion. School buses used for the transportation of school children in this

Municipality, whether owned and operated by a county board of education or privately owned and operated under contract with a county board of education, shall be equipped with at least two back-up lamps, one on each side of the rear door, with white lens or reflectors, capable of lighting the roadway and objects to the rear of the bus for safe backing during darkness, and which, at the option of the county board of education, may each provide fifty candlepower in illumination intensity instead of thirty-two candlepower.

(d) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing, and when so equipped may display such warning in addition to any other warning signals required by this article. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights or any shade of color between amber and red.

(e) Vehicles used by “rural mail carriers” in carrying or delivering mail in rural areas may be equipped with amber flashing lights. Such lights shall be on the front and rear of the vehicle and may be activated when the vehicle is stopped or decreasing speed in order to stop in the course of carrying, delivering or picking up mail along the route.

(f) Vehicles used as the lead car in a funeral procession are hereby authorized to be equipped with, but are not required to use, purple lamps or purple flashing lights. Such lamps may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing a funeral procession, and when so equipped may display such warning in addition to any other warning signals required by this article. The lamps or flashing lights used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously either illuminating or flashing purple lights. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing or illuminated purple lights. (WVaC 17C-15-19)

345.12 MULTIPLE-BEAM ROAD-LIGHTING EQUIPMENT REQUIREMENTS.

Except as hereinafter provided, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or combinations thereof on motor vehicles other than a motorcycle, motor-driven cycle or moped shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

- (a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading.
- (b) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

- (c) Every new motor vehicle, other than a motorcycle, motor-driven cycle or moped, registered in the State after January 1, 1952, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Such indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped. (WVaC 17C-15-20)

345.13 USE OF HEADLIGHT BEAMS.

Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in Section 345.02, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

- (a) Whenever a driver of a vehicle approaches an oncoming vehicle within 500 feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam specified in Section 345.12(b) shall be deemed to avoid glare at all times regardless of road contour and loading.
- (b) Whenever the driver of a vehicle follows another vehicle within 200 feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this Traffic Code other than the uppermost distribution of light specified in Section 345.12(a). (WVaC 17C-15-21)

345.14 SINGLE-BEAM ROAD-LIGHTING EQUIPMENT.

Head lamps arranged to provide a single distribution of light shall be permitted on motor vehicles manufactured and sold prior to July 1, 1952 in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

- (a) The head lamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five feet ahead project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two inches above the level on which the vehicle stands at a distance of seventy-five feet ahead.
- (b) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least 200 feet. (WVaC 17C-15-22)

345.15 LIGHTS ON MOTORCYCLES, MOTOR-DRIVEN CYCLES AND MOPEDS.

The head lamp or head lamps upon every motorcycle, motor-driven cycle and moped may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

- (a) Every head lamp or head lamps shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than 100 feet when the motorcycle, motor-driven cycle or moped is operated at any speed less than twenty-five miles per hour and at a distance of not less than 200 feet when it is operated at a speed of twenty-five or more miles per hour.
- (b) If the motorcycle, motor-driven cycle or moped is equipped with a multiple-beam type head lamp or head lamps the upper beam shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in Section 345.12(a) and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in Section 345.12(b).

- (c) If the motorcycle, motor-driven cycle or moped is equipped with a single-beam lamp or lamps such lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five feet ahead, shall project higher than the level of the center of the lamp from which it comes.
 - (d)
 - (1) Subject to subsection (d)(2) hereof, a motorcycle may be equipped with, and an operator of a motorcycle may use, the following auxiliary lighting:
 - A. Amber and white illumination;
 - B. Standard bulb running lights; or
 - C. Light-emitting diode pods and strips.
 - (2) Lighting under this subsection shall be:
 - A. Nonblinking;
 - B. Nonflashing;
 - C. Nonoscillating; and
 - D. Directed toward the engine and the drive train of the motorcycle to prevent interference with the driver's operation of the vehicle.
- (WVaC 17C-15-23)

345.16 ALTERNATE ROAD-LIGHTING EQUIPMENT.

Any motor vehicle may be operated under the conditions specified in Section 345.02 when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects seventy-five feet ahead in lieu of lamps required in Section 345.12, or Section 345.14, provided that at no time shall it be operated at a speed in excess of twenty miles per hour.

(WVaC 17C-15-24)

345.17 NUMBER OF DRIVING LIGHTS REQUIRED OR PERMITTED.

(a) At all times specified in Section 345.02 at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle other than a motorcycle, motor-driven cycle or moped, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(b) Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than 300 candlepower, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a street or highway.

(WVaC 17C-15-25)

345.18 SPECIAL RESTRICTIONS ON LIGHTS.

(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps or flashing front-direction signals which projects a beam of light of an intensity greater than 300 candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(b) No person may drive or move any vehicle or equipment upon any highway with any lamp or device on the vehicle displaying other than a white or amber light visible from directly in front of the center of the vehicle except as authorized by subsection (d) hereof.

(c) Except as authorized in subsections (d) and (g) of this section and Section 345.11, flashing lights are prohibited on motor vehicles: Provided, that any vehicle as a means for indicating right or left turn, or any vehicle as a means of indicating the same is disabled or otherwise stopped for an emergency may have blinking or flashing lights.

(d) Notwithstanding any other provisions of this Traffic Code, the following colors of flashing warning lights are restricted for the use of the type of vehicle designated:

- (1) Blue flashing warning lights are restricted to police vehicles. Authorization for police vehicles shall be designated by the chief administrative official of each police department.
- (2) Except for standard vehicle equipment authorized by Section 345.11, red flashing warning lights are restricted to the following:
 - A. Ambulances;
 - B. Fire-fighting vehicles;
 - C. Hazardous material response vehicles;
 - D. Industrial fire brigade vehicles;
 - E. Rescue squad vehicles not operating out of a fire department;
 - F. School buses;
 - G. Class A vehicles, as defined by West Virginia Code 17A-10-1 et seq. of those firefighters who are authorized by their fire chiefs to have the lights;
 - H. Class A vehicles of members of duly chartered rescue squads not operating out of a fire department;
 - I. Class A vehicles of members of ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;
 - J. Class A vehicles of out-of-state residents who are active members of West Virginia fire departments, ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;
 - K. West Virginia Department of Agriculture emergency response vehicles.
 - L. Vehicles designated by the Secretary of the Department of Homeland Security for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services, and Division of Homeland Security and Emergency Management;
 - M. Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the Department of Homeland Security and the county commission of the county of residence; and
 - N. Emergency management and operations vehicles operated by airports.

Red flashing warning lights attached to a Class A vehicle shall be operated only when responding to or engaged in handling an emergency requiring the attention of the firefighters, members of the ambulance services or chartered rescue squads.

- (3) The use of red flashing warning lights is authorized as follows:
 - A. Authorization for all ambulances shall be designated by the Department of Health and Human Resources and the sheriff of the county of residence.
 - B. Authorization for all fire department vehicles shall be designated by the Fire Chief and the State Fire Marshal's Office.
 - C. Authorization for all hazardous material response vehicles and industrial fire brigades shall be designated by the Chief of the Fire Department and the State Fire Marshal's Office.

- D. Authorization for all rescue squad vehicles not operating out of a fire department shall be designated by the squad chief, the sheriff of the county of residence and the Department of Health and Human Resources.
 - E. Authorization for school buses shall be designated as set out in West Virginia Code 17C-14-12.
 - F. Authorization for firefighters to operate Class A vehicles shall be designated by their fire chiefs and the State Fire Marshal's Office.
 - G. Authorization for members of ambulance services or any other emergency medical service personnel to operate Class A vehicles shall be designated by their chief official, the Department of Health and Human Resources and the sheriff of the county of residence.
 - H. Authorization for members of duly chartered rescue squads not operating out of a fire department to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of the county of residence and the Department of Health and Human Resources.
 - I. Authorization for out-of-state residents operating Class A vehicles who are active members of a West Virginia fire department, ambulance services or duly chartered rescue squads shall be designated by their respective chiefs.
 - J. Authorization for West Virginia Department of Agriculture emergency response vehicles shall be designated by the Commissioner of the Department of Agriculture.
 - K. Authorization for vehicles for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services, and Division of Homeland Security and Emergency Management shall be designated by the Secretary of the Department of Homeland Security and Emergency Management.
 - L. Authorization for Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the Department of Homeland Security and Emergency Management and the county commission of the county of residence.
 - M. Authorization for emergency management and operations vehicles operated by airports shall be designated by the airport director and the Secretary of the Department of Homeland Security and Emergency Management.
- (4) Yellow or amber flashing warning lights are restricted to the following:
- A. All other emergency vehicles, including tow trucks and wreckers, authorized by the West Virginia Code Chapter 17C and 17C-15-27;
 - B. Postal service vehicles and rural mail carriers, as authorized in Section 345.11;
 - C. Rural newspaper delivery vehicles;
 - D. Flag car services;
 - E. Vehicles providing road service to disabled vehicles;
 - F. Service vehicles of a public service corporation;
 - G. Snow removal equipment;
 - H. School buses; and
 - I. Automotive fire apparatus owned by a municipality or other political subdivision, by a volunteer or part-volunteer fire company or department or by an industrial fire brigade.

- (5) The use of yellow or amber flashing warning lights shall be authorized as follows:
- A. Authorization for tow trucks, wreckers, rural newspaper delivery vehicles, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation and postal service vehicles shall be designated by the sheriff of the county of residence.
 - B. Authorization for snow removal equipment shall be designated by the Commissioner of the Division of Highways.
 - C. Authorization for school buses shall be designated as set out in West Virginia Code 17C-14-12.
 - D. Authorization for automotive fire apparatus shall be designated by the Fire Chief in conformity with the NFPA 1901 standard for automotive fire apparatus as published by the National Fire Protection Association (NFPA) on July 18, 2003, and adopted by the State Fire Commission by legislative rule (87 CSR 1, et seq.), except as follows:
 - 1. With the approval of the State Fire Marshal, used automotive fire apparatus may be conformed to the NFPA standard in effect on the date of its manufacture or conformed to a later NFPA standard, and
 - 2. Automotive fire apparatus may be equipped with blinking or flashing headlamps.

(e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a county board of education, an organization receiving funding from the state or federal transit administration for the purpose of providing general public transportation, or hauling solid waste may be equipped with a white flashing strobotron warning light. This strobe light may be installed on the roof of a school bus, a public transportation vehicle, or a vehicle hauling solid waste not to exceed one-third the body length forward from the rear of the roof edge. The light shall have a single clear lens emitting light three hundred sixty degrees around its vertical axis and may not extend above the roof more than six and one-half inches. A manual switch and a pilot light must be included to indicate the light is in operation.

(f) Notwithstanding the foregoing provisions of this section, any waste service vehicle as defined in West Virginia Code Chapter 17C-6-11 may be equipped with yellow or amber flashing warning lights.

(g) It is unlawful for flashing warning lights of an unauthorized color to be installed or used on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red warning lights. (WVaC 17C-15-26)

345.19 MOTOR VEHICLE OR MOTORCYCLE BRAKES.

(a) Brake Equipment Required.

- (1) Every motor vehicle, other than a motorcycle, motor-driven cycle or moped, when operated upon a street or highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

- (2) Every motorcycle, motor-driven cycle and moped, when operated upon a street or highway, shall be equipped with at least one brake which may be operated by hand or foot.
- (3) Every trailer or semitrailer of a gross weight of 3,000 pounds or more when operated upon a street or highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle and so designed as to be applied by the driver of the towing motor vehicle from its cab, and such brakes shall be so designed and connected that in case of an accidental breakaway of the towed vehicle the brakes shall be automatically applied.
- (4) Every new motor vehicle, trailer or semitrailer hereinafter sold in this State and operated upon the streets or highways shall be equipped with service brakes upon all wheels, with the following exceptions:
 - A. Trucks and truck-tractors having three or more axles need not have brakes on the front wheels, except when such vehicles are equipped with at least two steerable axles, the wheels of one such axle need not be equipped with brakes, and
 - B. Any motorcycle, motor-driven cycle or moped and any semitrailer of less than 1,500 pounds gross weight need not be equipped with brakes.
- (5) In any combination of motor-driven vehicles, means shall be provided for applying the rearmost trailer brakes, of any trailer equipped with brakes, in approximate synchronism with the brakes on the towing vehicle and developing the required braking effort on the rearmost wheels at the fastest rate; or means shall be provided for applying braking effort first on the rearmost trailer equipped with brakes; or both of the above means capable of being used alternatively may be employed.
- (6) Every such vehicle and combination of vehicles, except motorcycles, motor-driven cycles and mopeds, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading on a surface free from snow, ice or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind.

The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that a failure of any one part shall not leave the vehicle without operative brakes.
- (7) The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation.

(b) Performance Ability of Brakes. Every motor vehicle or combination of motor-drawn vehicles shall be capable, at all times and under all conditions of loading, of being stopped on a dry, smooth, level road free from loose material, upon application of the service (foot) brake, within the distances specified below, or shall be capable of being decelerated at a sustained rate corresponding to these distances:

	<u>Feet to stop from 20 miles per hour</u>	<u>Deceleration in feet per second</u>
Vehicle or combinations of vehicles having brakes on all wheels	30	14
Vehicles or combinations of vehicles not having brakes on all wheels	40	10.7

(c) Maintenance of Brakes. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle. (WVaC 17C-15-31)

(d) Jake Brakes Prohibited.

- (1) There is hereby prohibited within the City use of the engine braking system commonly referred to as a "Jake Brake".
- (2) Whoever is found to have violated this subsection (d) shall be fined not more than five hundred dollars (\$500.00).
- (3) The Street Department of the City is directed to acquire or prepare signs notifying the public of the prohibition on using engine or "Jake Brakes" in the City and to place the same in areas where their prior use was reported. (Ord. 4-23-19.)

345.20 INSPECTION OF BRAKES ON MOTORCYCLES, MOTOR-DRIVEN CYCLES AND MOPEDS.

No person shall operate on any street or highway any motorcycle, motor-driven cycle or moped in the event the Commissioner of Highways has disapproved the brake equipment upon such vehicle or type of vehicle. (WVaC 17C-15-32)

345.21 HORN, SIREN AND THEFT ALARM SIGNAL.

(a) Every motor vehicle when operated upon a street or highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a street or highway.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle or bell, except as otherwise permitted in this section.

(c) It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

Any authorized emergency vehicle may be equipped with a siren, whistle or bell, capable of emitting sound audible under normal conditions from a distance of not less than 500 feet and of a type approved by the Department of Motor Vehicles, but such siren shall not be used except when such vehicle is operated in response to an emergency or in the immediate pursuit of an actual or suspected violator of the law, in which such latter events the driver of such vehicle shall sound such siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof. (WVaC 17C-15-33)

345.22 MUFFLER; MUFFLER CUTOUT; EXCESSIVE SMOKE, GAS OR NOISE.

(a) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise. Such muffler shall be the muffler originally installed by the manufacturer of the vehicle or, if a replacement, the equivalent thereof. No person shall use a muffler cutout, bypass or similar device upon a motor vehicle on a street or highway.

(b) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke. (WVaC 17C-15-34)

345.23 REAR-VIEW MIRROR.

Every motor vehicle which is so constructed or loaded as to obstruct the driver's view to the rear thereof from the driver's position shall be equipped with a mirror so located as to reflect to the driver a view of the street or highway for a distance of at least 200 feet to the rear of such vehicle. (WVaC 17C-15-35)

345.24 WINDSHIELD TO BE UNOBSTRUCTED; WINDSHIELD WIPER.

(a) No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon the front windshield, side wings or side or rear windows of such vehicle which obstructs the driver's clear view of the street or highway or any intersecting street or highway.

(b) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(c) Every windshield wiper upon a motor vehicle shall be maintained in good working order. (WVaC 17C-15-36)

345.25 TIRE EQUIPMENT RESTRICTIONS.

(a) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

(b) No person shall operate or move on any highway any motor vehicle, trailer or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that:

- (1) It shall be permissible to use farm machinery with tires having protuberances which will not injure the highway;
- (2) It shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice or other conditions tending to cause a vehicle to skid; and

- (3) It shall be permissible to use studded tires during the period from November 1 of each year until April 15 of the following year. Provided that in the interest of highway maintenance, no vehicle moved on a highway, other than school buses, shall be equipped with studded tires which are operational with a recommended air pressure greater than forty pounds per square inch.

(d) Council may in its discretion issue special permits authorizing the operation upon the highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this Traffic Code.
(WVaC 17C-15-37)

345.26 SAFETY GLASS IN MOTOR VEHICLES.

(EDITOR'S NOTE: Former West Virginia Code 17C-15-38 from which Section 345.26 was derived was repealed by Senate Bill 444, effective May 31, 2018.)

345.27 VEHICLES TRANSPORTING EXPLOSIVES.

Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a street or highway shall at all times comply with the provisions of this section.

- (a) Such vehicle shall be marked or placarded on each side and the rear with the word "Explosives" in letters not less than eight inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four inches square marked with the word "Danger" in white letters six inches high.
- (b) Every such vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use and placed at a convenient point on the vehicle so used. (WVaC 17C-15-41)

345.28 VIDEO SCREENS AND MONITORS, TELEVISION RECEIVERS IN VIEW OF DRIVER PROHIBITED.

(a) No motor vehicle may be operated on a street or highway when equipped with a television receiver, video monitor, television or video screen unless the receiver, screen or monitor is configured so that the moving images are not in view of the operator while the vehicle is in motion, or if falls within one or more of the categories set forth in subsection (b) or (c) of this section.

- (b) This prohibition does not apply to the following equipment installed in a vehicle:
- (1) A visual display if it does not show video or television broadcast images in view of the operator while the motor vehicle is in motion;
 - (2) A global positioning device;
 - (3) A mapping display;
 - (4) A visual display used to enhance or supplement the driver's view forward, behind or to the sides of a motor vehicle for the purpose of maneuvering the vehicle;
 - (5) A visual display used to enhance or supplement a driver's view of vehicle occupants; or
 - (6) Television-type receiving equipment used exclusively for safety or traffic engineering information.

(c) A television receiver, video monitor, television or video screen or other similar means of visually displaying a television broadcast or video signal is not prohibited if the equipment has an interlock device that, when the motor vehicle is driven, disables the equipment for all uses except as a visual display described in subsection (b)(1) to (6) of this section.
(WVaC 17-C-15-42)

345.29 SAFETY EQUIPMENT FOR MOTORCYCLISTS, MOTORCYCLES, MOTOR-DRIVEN CYCLES AND MOPEDS.

(a) No person shall operate or be a passenger on any motorcycle or motor-driven cycle unless he is wearing securely fastened on his head by either a neck or chin strap a protective helmet designed to deflect blows, resist penetration and spread impact forces. Any helmet worn by an operator or passenger shall meet the current performance specifications established by the American National Standards Institute Standard, Z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No. 218 or Snell Safety Standards for Protective Headgear for Vehicle Users.

(b) No person shall operate or be a passenger on any motorcycle or motor-driven cycle unless he is wearing safety, shatter-resistant eyeglasses (excluding contact lenses), or eyegoggles or face shield that complies with the performance specifications established by the American National Standards Institute for Head, Eye and Respiratory Protection, Z 2.1. In addition, if any motorcycle, motor-driven cycle or moped is equipped with a windshield or windscreen, the windshield or windscreen shall be constructed of safety, shatter-resistant material that complies with the performance specifications established by Department of Transportation Federal Motor Vehicle Safety Standard No. 205 and American National Standards Institute, Safety Glazing Materials for Glazing Motor Vehicles Operated on Land Highways, Standard Z 26.1.

(c) No person shall operate a motorcycle, motor-driven cycle or moped on which the handlebars or grips are more than fifteen inches higher than the uppermost part of the operator's seat when the seat is not depressed in any manner.

(d) A person operating a motorcycle, motor-driven cycle or moped shall ride in a seated position facing forward and only upon a permanent operator's seat attached to the vehicle. No operator shall carry any other person nor shall any other person ride on such a vehicle unless the vehicle is designed to carry more than one person, in which event a passenger may ride behind the operator upon the permanent operator's seat if it is designed for two persons, or upon another seat firmly attached to the vehicle to the rear of the operator's seat and equipped with footrests designed and located for use by the passenger or in a sidecar firmly attached to the vehicle. No person shall ride sidesaddle on a seat. An operator may carry as many passengers as there are seats and footrests to accommodate those passengers. Additional passengers may be carried in a factory produced side car provided that there is one passenger per seat. Passengers riding in a sidecar shall be restrained by safety belts.

(e) Every motorcycle, motor-driven cycle and moped shall be equipped with a rearview mirror affixed to the handlebars or fairings and adjusted so that the operator shall have a clear view of the road and condition of traffic behind him for a distance of at least 200 feet.

- (f) (1) "Autocycle" means a fully or partially enclosed motorcycle that is equipped with safety belts, rollover protection, a rearview mirror, automotive seating, a steering wheel and equipment otherwise required on a motorcycle and which has no more than three wheels in contact with the roadway at any one time. (WVaC 17C-1-69)
- (2) Notwithstanding any provision of this code to the contrary, a person with a valid driver's license who is operating a fully enclosed autocycle, as defined in subsection (f)(1) hereof, is exempt from the provisions of this section. (WVaC 17-C-15-44)

345.30 CERTIFICATION LABELS ON MOPEDS.

Every moped sold in this Municipality shall have permanently affixed to it a certification label which shall contain the following information:

- (1) Name of manufacturer;
- (2) Month and year of manufacture;
- (3) Gross vehicle weight rating (GVWR);
- (4) Gross axle weight rating for front and rear axles (GAWR);
- (5) Vehicle identification number;
- (6) Classification type; and
- (7) Statement of conformance to Federal standards as required by Federal law. (WVaC 17C-15-45)

345.31 CHILD PASSENGER SAFETY DEVICES REQUIRED; CHILD SAFETY SEATS AND BOOSTER SEATS.

Every driver who transports a child under the age of eight years in a passenger automobile, van or pickup truck other than one operated for hire shall, while the motor vehicle is in motion and operated on a street or highway, provide for the protection of the child by properly placing, maintaining and securing the child in a child passenger safety device system meeting applicable federal motor vehicle safety standards; provided, that if a child is under the age of eight years and at least four feet nine inches tall, a safety belt shall be sufficient to meet the requirements of this section.

Any person who violates any provision of this section shall be fined not less than ten dollars (\$10.00) nor more than twenty dollars (\$20.00).

A violation of this section does not by virtue of the violation constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity may not affect other provisions or applications of this section and to this end the subsections of this section are declared to be severable.

If all seat belts in a vehicle are being used at the time of examination by a law officer and the vehicle contains more passengers than the total number of seat belts or other safety devices as installed in compliance with federal motor vehicle safety standards, the driver may not be considered in violation of this section. (WVaC 17C-15-46)

345.32 CERTIFICATE OF INSPECTION AND APPROVAL.

No owner or operator of any vehicle required to be inspected under West Virginia Code Article 17C-16 shall operate or permit to be operated such vehicle without having displayed thereon a current and valid certificate of inspection and approval or fail to produce same upon demand of any authorized person as therein designated. (WVaC 17C-16-9)

345.33 ALTERATION OF MOTOR VEHICLES; BUMPER HEIGHT LIMITS.

(a) No person shall operate upon a public street or highway any motor vehicle registered or required to be registered in this State if it has been modified by alteration of its height from the ground to the extent that its bumpers, measured to any point on the lower edge of the main horizontal bumper bar, exclusive of any bumper guards, do not fall within the limits specified herein for its gross vehicle weight rating category. The front and rear bumper height of motor vehicles whose gross vehicle weight rating is 10,000 pounds or less shall be no less than six inches and no more than thirty-one inches. In the absence of bumpers, and in cases where bumper heights have been altered or modified, height measurements shall be made to the bottom of the frame rail. If a motor vehicle has a bumper, the bumper must be at least three inches in

vertical width, centered on the center line of the motor vehicle and not less than the width of the wheel track distance. The provisions of this subsection do not apply to motor vehicles with a gross vehicle weight rating in excess of 10,000 pounds. For the purpose of this subsection, the term "gross vehicle weight ratings" means the manufacturer's gross vehicle weight ratings established for that vehicle.

(b) The maximum distance between the vehicle body to the vehicle frame shall not exceed three inches. The distance from the vehicle body to the vehicle frame shall be measured from the vehicle body mount seat to the vehicle frame mount seat: provided, that the maximum distance limitation shall not prohibit a body lift kit up to three inches to be added to the manufacturer's original spacer between the body and the frame. No vehicle shall be modified to cause the vehicle body or chassis to come in contact with the ground, expose the fuel tank to damage from collision, or cause the wheels to come in contact with the body under normal operation. No part of the original suspension system may be disconnected to defeat the safe operation of the suspension system. Modification of the front end suspension by the use of lift blocks is expressly prohibited.

(c) Nothing contained in this section prevents the installation of heavy duty equipment, including shock absorbers and overload springs.

(d) Nothing contained in this section prohibits the operation on a public street or highway of a motor vehicle with normal wear to the suspension system if such normal wear does not adversely affect the control of the vehicle.

(e) This section does not apply to specially designed or modified motor vehicles when operated off the public streets and highways in races and similar events. Such motor vehicles may be lawfully towed on the streets and highways of this Municipality.

(f) Modifications to motor vehicles, not prohibited herein, shall be made subject to inspection as provided in subsection (h) hereof.

(g) Nothing contained in this section shall subject a vehicle modified solely by the installation of tires not larger than two sizes beyond the maximum specified by the manufacturer to inspection as provided in subsection (h) hereof.

(h) Any motor vehicle which has been altered from the manufacturer's specification with respect to bumper height for that vehicle make and model but within the allowable limits of subsection (a) hereof or any motor vehicle which has been altered from the manufacturer's specification for that vehicle make and model with respect to the distance from the vehicle body to vehicle frame but within the allowable limits of subsection (b) hereof may be operated upon a public street or highway in this Municipality, subject to inspection under West Virginia Code 17C-15-48: provided, that any motor vehicle which has been altered from the manufacturer's specification by lowering the bumper height for that vehicle make and model within the allowable limits of subsection (a) hereof shall be exempt from the inspection requirements hereunder and may be operated upon a public street or highway in this Municipality subject to provisions of West Virginia Code Chapter 17C-16. Each municipal law-enforcement agency must record on crash report forms whether a modified vehicle was involved in the crash. (WVaC 17C-15-48)

345.34 SUN SCREENING DEVICES.

(a) No person may operate a motor vehicle that is registered or required to be registered in the State on any public highway, road or street that has a sun screening device on the windshield, the front side wings and side windows adjacent to the right and left of the driver and windows adjacent to the rear of the driver that do not meet the requirements of this section. Provided, that law-enforcement K-9 and other emergency vehicles that are designed to haul animals are exempt from this requirement.

(b) A sun screening device when used in conjunction with the windshield must be nonreflective and may not be red, yellow or amber in color. A sun screening device may be used only along the top of the windshield and may not extend downward beyond the ASI line or more than five inches from the top of the windshield whichever is closer to the top of the windshield.

(c) A sun screening device when used in conjunction with the automotive safety glazing materials of the side wings or side windows located at the immediate right and left of the driver shall be a nonreflective type with reflectivity of not more than twenty percent (20%) and have a light transmission of not less than thirty-five percent (35%). The side windows behind the driver and the rear most windows may have a sun screening device that is designed to be used on automotive safety glazing materials that has a light transmission of not less than thirty-five percent (35%) and a reflectivity of not more than twenty percent (20%). If a sun screening device is used on glazing behind the driver, one right and one left outside rear view mirror is required.

(d) Each manufacturer shall:

- (1) Certify to the State Police and Division of Motor Vehicles that a sun screening device used by it is in compliance with the reflectivity and transmittance requirements of this section;
- (2) Provide a label not to exceed one and one-half square inches in size, with a means for the permanent and legible installations between the sun screening material and each glazing surface to which it is applied that contains the manufacturer's name and its percentage of light transmission; and
- (3) Include instructions with the product or material for proper installation, including the affixing of the label specified in this section. The labeling or marking must be placed in the left lower corner of each glazing surface when facing the vehicle from the outside.

(e) No person shall:

- (1) Offer for sale or for use any sun screening product or material for motor vehicle use not in compliance with this section; or
- (2) Install any sun screening product or material on vehicles intended for use on public roads without permanently affixing the label specified in this section.

(f) The provisions of this section do not apply to a motor vehicle registered in this State in the name of a person, or the person's legal guardian, who has an affidavit signed by a physician or an optometrist licensed to practice in this State that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sun screening material which would be of a light transmittance or luminous reflectance in violation of this section. The affidavit must be in the possession of the person so afflicted, or the person's legal guardian, at all times while being transported in the motor vehicle.

(g) The light transmittance requirement of this section does not apply to windows behind the driver on trucks, buses, trailers, mobile homes and multipurpose passenger vehicles.

(h) As used in this section:

- (1) "Bus" means a motor vehicle with motive power, except a trailer, designed for carrying more than ten persons.
- (2) "Light transmission" means the ratio of the amount of total light to pass through a product or material to the amount of the total light falling on the product or material.
- (3) "Luminous reflectants" means the ratio of the amount of total light that is reflected outward by the product or material to the amount of the total light falling on the product or materials.
- (4) "Manufacturer" means any person engaged in the manufacturing or assembling of sun screening products or materials designed to be used in conjunction with vehicle glazing materials for the purpose of reducing the effects of the sun.
- (5) "Motor homes" means vehicular units designed to provide temporary living quarters built into and an integral part of or permanently attached to a self-propelled motor vehicle chassis.
- (6) "Multipurpose passenger vehicle" means a motor vehicle with motive power, except a trailer, designed to carry ten persons or less which is constructed either on a truck chassis or with special features for occasional offroad operation.
- (7) "Nonreflective" means a product or material designed to absorb light rather than to reflect it.
- (8) "Passenger car" means a motor vehicle with motive power, except a multipurpose passenger vehicle, motorcycle or trailer, designed for carrying ten persons or less.
- (9) "Sun screening device" means film material or device that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.
- (10) "Truck" means a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment. (WVaC 17C-15-36a)

345.35 OPERATION OF VEHICLES WITH SAFETY BELTS.

(a) A person may not operate a passenger vehicle on a public street or highway unless the person, any passenger in the back seat under eighteen years of age, and any passenger in the front seat of such passenger vehicle is restrained by a safety belt meeting applicable federal motor vehicle safety standards. For the purposes of this section, the term "passenger vehicle" means a motor vehicle which is designed for transporting fifteen passengers or less, including the driver, except that the term does not include a motorcycle, a trailer or any motor vehicle which is not required on the date of the enactment of this section under a federal motor vehicle safety standard to be equipped with a belt system. The provisions of this section shall apply to all passenger vehicles manufactured after January 1, 1967, and being 1968 models and newer.

(b) The required use of safety belts as provided in this section does not apply to a duly appointed or contracted rural mail carrier of the United States Postal Service who is actually making mail deliveries or to a passenger or operator with a physically disabling condition whose physical disability would prevent appropriate restraint in the safety belt if the condition is duly certified by a physician who states the nature of the disability as well as the reason such restraint is inappropriate.

(c) Any person who violates the provisions of this section shall be fined twenty-five dollars (\$25.00). No court costs or other fees may be assessed for a violation of this section.

(d) Notwithstanding any other provision of this Code to the contrary, no points may be entered on any driver's record maintained by the Division of Motor Vehicles as a result of a violation of this section.

(e) This section does not abrogate or alter the provisions of Section 345.31 relating to the mandatory use of child passenger safety devices.
(WVaC 17C-15-49)

345.99 PENALTY.

(a) General Article Penalty. Unless otherwise provided for in this article, any person violating any provision of this article shall be fined not more than one hundred dollars (\$100.00); upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars (\$200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars (\$500.00).

(b) Brakes. Any person violating Sections 345.19 or 345.20 shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than ten days, or both; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than twenty days, or both; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both. (WVaC 17C-15-6)

(c) Sunscreening Devices. Whoever violates Section 345.34 shall be fined not more than two hundred dollars (\$200.00).
(WVaC 17C-15-36a)

(d) Safety Belts. Any person who violates the provisions of Section 345.35 shall be fined not more than twenty-five dollars (\$25.00). No court costs or other fees shall be assessed for a violation of this section.
(WVaC 17C-15-49)

ARTICLE 347
Commercial and Heavy Vehicles

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| <p>347.01 Oversize or overweight vehicles.</p> <p>347.02 Projecting loads on passenger vehicles.</p> <p>347.03 Maximum width, height and length.</p> | <p>347.04 Loads dropping or leaking.</p> <p>347.05 Towing requirements.</p> <p>347.06 State motor carrier road tax identification markers.</p> <p>347.99 Penalty.</p> |
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CROSS REFERENCES

See sectional histories for similar State law
 Authority to designate weight limits on local streets -
 see W. Va. Code 17C-2-8(a)(7)
 Authority to permit oversized buses - see W. Va.
 Code 17C-17-2(b)
 Red light or flag on extended load - see TRAF. 345.07
 Transporting explosives - see TRAF. 345.27

347.01 OVERSIZE OR OVERWEIGHT VEHICLES.

(a) Use of State Route. No person shall operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in West Virginia Code Article 17C-17 upon any State route within the Municipality, except pursuant to special written permit issued by the Commissioner of Highways, or upon any local truck route. Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer.

No holder of a permit issued by the Commissioner of Highways shall be required to obtain any local permit or license or pay any local fee or charge for movement on any State route within the Municipality; however, it shall be unlawful to operate any such vehicle or combination of vehicles upon any roadway within the Municipality which is not a State route, except as provided in subsection (c) hereof.

(b) Use of Local Streets. No person shall operate a vehicle exceeding a size as specified in Section 347.03 or exceeding a gross weight of five tons, upon any street in the Municipality other than a State route, except those local streets designated as a truck route and marked as such by appropriate traffic signs, and except when such operation is necessary to load or unload property, to go to or from the usual place of storage of such vehicle or to perform any other legitimate business or act other than passage through the Municipality. Operators of vehicles so deviating from either a State route or a designated truck route within the Municipality shall confine such deviation to that required in order to accomplish the purpose of the departure.

(c) Local Permit and Conditions. Upon application and for good cause, the Police Chief may issue a local permit authorizing an applicant to move an oversize or overweight vehicle or combination of vehicles upon local streets.

No permittee shall be required to obtain a special permit from the Commissioner of Highways for the movement of the vehicle or combination of vehicles on streets or highways under local jurisdiction; however, the approval of the Commissioner of Highways shall be required for movement upon State routes as provided in subsection (a) hereof.

The Police Chief may grant a permit for a single or round trip, or for such period of time, not to exceed one year, as the Police Chief in his discretion deems advisable, or for the duration of any construction project. The Police Chief may limit or prescribe terms or conditions of operation for such vehicle or combination of vehicles by designating the route, hours, speed or such other restrictions as may be necessary for the preservation of the public peace, property, health and safety. The Police Chief may require the posting of bond or other security necessary to compensate for any damage to a roadway or road structure.

For each such permit, the Police Chief shall charge five dollars (\$5.00), and for each hour of time or any part thereof spent by each police officer in supervising the movement of such vehicle, the applicant shall pay the sum of ten dollars (\$10.00).

Signs shall be posted indicating "no thru trucks - gross weight 5 tons" or words of similar import to apprise drivers of the limitations imposed by this section. No driver shall disobey the instructions indicated on any such sign.

Violation of any of the limitations, terms or conditions of the permit granted by the Police Chief shall be cause for immediate revocation or suspension of such permit, and denial of request for any future permit. Such violation shall also subject the violator to the penalty prescribed by Section 303.99.

347.02 PROJECTING LOADS ON PASSENGER VEHICLES.

(a) No passenger-type vehicle shall be operated on any street or highway with any load carried thereon extending beyond the line of the fenders of the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof.

(b) A motor home, travel trailer or truck camper may exceed the maximum width prescribed in Section 347.03, if the excess width is attributable to an appurtenance that does not exceed more than six inches beyond the body of the vehicle.
(WVaC 17C-17-3)

347.03 MAXIMUM WIDTH, HEIGHT AND LENGTH.

(a) A vehicle, including any load thereon, may not exceed a height of thirteen feet six inches, but the owner or owners of such vehicles shall be responsible for damage to any bridge or highway structure and to municipalities for any damage to traffic control devices or other highway structures where such bridges, devices or structures have a vehicle clearance of less than thirteen feet six inches.

(b) A motor vehicle, including any load thereon, may not exceed a length of forty feet extreme overall dimension, inclusive of front and rear bumpers, except that a motor home and school bus may not exceed a length of forty-five feet, exclusive of front and rear bumpers.

(c) Except as hereinafter provided in this subsection or in subsection (d) of this section, a combination of vehicles coupled together may not consist of more than two units and no combination of vehicles including any load thereon shall have an overall length, inclusive of front and rear bumpers, in excess of fifty-five feet except as provided in West Virginia Code 17C-17-11b, and except as otherwise provided in respect to the use of a pole trailer as authorized in West Virginia Code 17C-17-5. The limitation that a combination of vehicles coupled together may not consist of more than two units may not apply to:

- (1) A combination of vehicles coupled together by a saddle-mount device used to transport motor vehicles in a drive-away service when no more than three saddle mounts are used, if equipment used in the combination meets the requirements of the safety regulations of the United States Department of Transportation and may not exceed an overall length of more than seventy-five feet; or
- (2) A combination of vehicles coupled together, one of which is a travel trailer or folding camping trailer having an overall length, exclusive of front and rear bumpers, not exceeding sixty-five feet.

(d) A combination of two vehicles coupled together, one of which is a motor home, or a combination of vehicles coupled together, one of which is a travel trailer or folding camping trailer, may not exceed an overall length, exclusive of front and rear bumpers of sixty-five feet.

(e) Notwithstanding the provisions of subsections (a), (b), (c) and (d) of this section, the Commissioner of Highways may designate, upon his or her own motion or upon the petition of an interested party, a combination vehicle length not to exceed seventy feet.

(f) The length limitations for truck tractor-semitrailer combinations and truck tractor-semitrailer-trailer combinations operating on the national system of interstate and defense highways and those classes of qualifying federal-aid primary system highways so designated by the United States Secretary of Transportation and those highways providing reasonable access to and from terminals, facilities for food, fuel, repairs and rest and points of loading and unloading for household goods carriers from such highways and further, as to other highways so designated by the West Virginia Commissioner of Highways, shall be as follows: the maximum length of a semitrailer unit operating in a truck tractor-semitrailer combination shall not exceed forty-eight feet in length except where semitrailers have an axle spacing of not more than thirty-seven feet between the rear axle of the truck tractor and the front axle of the semitrailer, such semitrailer shall be allowed to be not more than fifty-three feet in length and the maximum length of any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination may not exceed twenty-eight feet in length and in no event shall any combinations exceed three units, including the truck tractor: provided, that nothing herein contained shall impose an overall length limitation as to commercial motor vehicles operating in truck tractor-semitrailer or truck tractor-semitrailer-trailer combinations. (WVaC 17C-17-4)

(g) The total outside width, exclusive of safety equipment authorized by the United States Department of Transportation, of any vehicle or the load thereon may not exceed ninety-six inches, except as otherwise provided in West Virginia Code Article 17C-17: provided, that any vehicle with a total outside width of 102 inches, exclusive of safety equipment authorized by the United States Department of Transportation, may be operated on any street or highway designated by the United States Department of Transportation or the Commissioner of the Department of Highways or on any street or highway having a minimum lane width of ten feet.

(h) Motor homes, travel trailers, truck campers, and motor buses with a total outside width of 102 inches, excluding safety equipment authorized by the United States Department of Transportation may operate on any street or highway.
(WVaC 17C-17-2)

347.04 LOADS DROPPING OR LEAKING.

(a) No vehicle or combination of vehicles shall be operated on any street or highway unless such vehicle or combination of vehicles is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

(b) No person shall operate on any street or highway any vehicle or combination of vehicles with any load unless such load and any covering thereon is securely fastened so as to prevent such covering or load from becoming loose, detached or in any manner a hazard to other users of the street or highway.
(WVaC 17C-17-6)

347.05 TOWING REQUIREMENTS.

(a) When one vehicle is towing another the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and such drawbar or other connection shall not exceed fifteen feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered.

(b) When one vehicle is towing another and the connection consists of a chain, rope or cable, there shall be displayed upon such connection a white flag or cloth not less than twelve inches square.
(WVaC 17C-17-7)

347.06 STATE MOTOR CARRIER ROAD TAX IDENTIFICATION MARKERS.

No person shall operate or cause to be operated in the City any motor carrier subject to West Virginia Code Articles 11-14 and 11-14A without first securing from the State Tax Commissioner an identification marker, trip permit or transportation permit for each such motor carrier.

Any person, whether such person is the owner, licensee or lessee, or the employee, servant or agent thereof, who operates or causes to be operated in this City, a motor carrier in violation of this section, shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) and each day such violation continues or recurs shall constitute a separate offense.
(Ord. 2-27-90.)

347.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty.)

ARTICLE 349
Miscellaneous Rules

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| <p>349.01 Unattended motor vehicle.</p> <p>349.02 Backing a vehicle.</p> <p>349.03 Drivers' view and control to be unobstructed by load or persons.</p> <p>349.04 Passengers in seat with operator.</p> <p>349.05 Passengers on running board.</p> <p>349.06 Following authorized emergency vehicles.</p> <p>349.061 Approaching authorized emergency vehicles.</p> <p>349.07 Driving over fire hose.</p> <p>349.08 Funeral processions.</p> <p>349.09 Opening door of vehicle on traffic side.</p> <p>349.10 Boarding or alighting from vehicle.</p> <p>349.11 Unlawful riding.</p> | <p>349.12 Squealing tires, cracking exhaust noises.</p> <p>349.13 Taking, injuring or tampering with vehicle.</p> <p>349.14 Driving upon sidewalk, street lawn or curb.</p> <p>349.15 Shortcutting; avoiding traffic control devices.</p> <p>349.16 Coasting prohibited.</p> <p>349.17 Driving through safety zone.</p> <p>349.18 Driving upon street posted as closed for repair.</p> <p>349.19 Obstruction of traffic.</p> <p>349.20 Vehicle security.</p> <p>349.21 Littering from a motor vehicle.</p> <p>349.22 Prohibited use of an electronic communication device.</p> <p>349.99 Penalty.</p> |
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CROSS REFERENCES

See sectional histories for similar State law
Obedience to traffic control devices - see TRAF. 313.01

349.01 UNATTENDED MOTOR VEHICLE.

(EDITOR'S NOTE: Former West Virginia Code 17C-14-1 from which Section 349.01 was derived was repealed by House Bill 2612, effective May 14, 2018.)

349.02 BACKING A VEHICLE.

The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.
(WVaC 17C-14-2)

349.03 DRIVERS' VIEW AND CONTROL TO BE UNOBSTRUCTED BY LOAD OR PERSONS.

(a) No person shall drive a vehicle when it is so loaded as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his or her control over the driving mechanism of the vehicle. (WVaC 17C-14-4)

349.04 PASSENGERS IN SEAT WITH OPERATOR.

No more than three persons including the operator shall ride or be permitted by such operator to ride in the seat with the operator of any motor vehicle while such motor vehicle is being operated on the streets or highways of this Municipality: provided, however, that the limitation of this section shall not apply to a truck cab or truck crew compartment properly designed for the occupancy of four persons including the operator, and so designated on the registration card by the Division of Motor Vehicles. (WVaC 17C-14-5)

349.05 PASSENGERS ON RUNNING BOARD.

No passenger shall ride nor shall the operator permit any passenger to ride on the running boards of any motor vehicle while such vehicle is being operated on the streets or highways of this Municipality. (WVaC 17C-14-6)

349.06 FOLLOWING AUTHORIZED EMERGENCY VEHICLES.

The driver of any vehicle other than one on official business may not follow any authorized emergency vehicle traveling in response to a fire alarm or other emergency closer than 500 feet or drive into or park such vehicle within the block where such authorized emergency vehicle has stopped in answer to a fire alarm or other emergency. (WVaC 17C-14-9)

349.061 APPROACHING AUTHORIZED EMERGENCY VEHICLES.

The driver of any vehicle approaching a stationary authorized emergency vehicle, when the authorized emergency vehicle is giving a signal by displaying alternately flashing red, red and white, blue, or red and blue lights or amber or yellow warning lights, shall:

- (a) Proceed with due caution, yield the right-of-way by making a lane change not adjacent to that of the authorized emergency vehicle, if possible with regard to safety and traffic conditions, if on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the approaching vehicle and reduce speed to a safe level for road conditions; or
- (b) Proceed with due caution, reduce the speed of the vehicle, maintaining a safe speed not to exceed fifteen miles per hour on any nondivided highway or street and twenty-five miles per hour on any divided highway depending on road conditions, if changing lanes would be impossible or unsafe. (WVaC 17C-14-9a)

349.07 DRIVING OVER FIRE HOSE.

No vehicle shall be driven over any unprotected hose of the Fire Department when laid down on any street or private driveway to be used at any fire or alarm of fire, without the consent of the Fire Department official in command. (WVaC 17C-14-10)

349.08 FUNERAL PROCESSIONS.**(a) Definitions.**

- (1) “Funeral director” and “funeral establishment” have the same meaning as set forth in West Virginia Code 30-6-4.
- (2) “Funeral procession” means two or more vehicles accompanying the body of a deceased person, or traveling to the church, chapel, cemetery, or other location at which the funeral service or final disposition is to be held, including a funeral lead vehicle or a funeral escort vehicle.
- (3) “Funeral lead vehicle” means any authorized law enforcement or nonlaw-enforcement motor vehicle or a funeral escort vehicle being used to lead and facilitate the movement of a funeral procession. A funeral hearse may serve as a funeral lead vehicle.
- (4) “Funeral escort” means a person or entity that provides escort services for funeral processions, including law-enforcement personnel and agencies.
- (5) “Funeral escort vehicle” means any motor vehicle that escorts a funeral procession.

(b) Funeral Procession Right-Of-Way.

- (1) Regardless of any traffic control device or right-of-way provisions prescribed by state or local ordinance, pedestrians and operators of all vehicles, except as stated in subsection (b)(3) of this section, shall yield the right-of-way to any vehicle which is part of a funeral procession being led by a funeral escort vehicle or a funeral lead vehicle.
- (2) When the funeral lead vehicle lawfully enters an intersection, either by reason of a traffic control device or at the direction of law-enforcement personnel, the remaining vehicles in the funeral procession may follow through the intersection regardless of any traffic control devices or right-of-way provisions prescribed by state or local law.
- (3) Funeral processions have the right-of-way at intersections regardless of traffic control devices subject to the following conditions and exceptions:
 - A. Operators of vehicles in a funeral procession shall yield the right-of-way to an approaching emergency vehicle giving an audible or visible signal;
 - B. Operators of vehicles in a funeral procession shall yield the right-of-way when directed to do so by a police officer; and
 - C. Operators of vehicles in a funeral procession must exercise due care when participating in a funeral procession.

(c) Driving in Procession.

- (1) All vehicles comprising a funeral procession shall follow the preceding vehicle in the funeral procession as closely as is practical and safe.
- (2) Any ordinance, law or rule stating that motor vehicles shall be operated to allow sufficient space enabling any other vehicle to enter and occupy such space without danger is not applicable to vehicles in a funeral procession.

(d) Liability. Liability for any death, personal injury or property damage suffered on or after the first day of July, one thousand nine hundred ninety-nine, by any person in a funeral procession may not be imposed upon a funeral director or funeral establishment or their employees or agents unless the death, personal injury or property damage is proximately caused by the negligent or intentional act of a funeral director or funeral establishment or their employees or agents.

(e) Equipment. All nonlaw-enforcement funeral escort vehicles and funeral lead vehicles may be equipped with at least one lighted circulation flashing lamp exhibiting an amber or purple light or lens. Flashing amber or purple lights may be used when such vehicles are used in a funeral procession. (WVaC Art. 17C-23)

349.09 OPENING DOOR OF VEHICLE ON TRAFFIC SIDE.

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a motor vehicle available to moving traffic for a period of time longer than is necessary to load or unload passengers.

349.10 BOARDING OR ALIGHTING FROM VEHICLE.

No person shall board or alight from any vehicle while such vehicle is in motion.

349.11 UNLAWFUL RIDING.

No person shall ride on any vehicle upon any portion thereof not designated or intended for the use of passengers when the vehicle is in motion. This provision shall not apply to an employee engaged in the necessary discharge of a duty or to persons riding within truck bodies in space intended for merchandise.

349.12 SQUEALING TIRES, CRACKING EXHAUST NOISES.

No person shall unnecessarily race the motor of any vehicle and no person shall operate any motor vehicle, except in an emergency, in such a manner that the vehicle is so rapidly accelerated or started from a stopped position that the exhaust system emits a loud, cracking or chattering noise unusual to its normal operation, or whereby the tires of such vehicle squeal or leave tire marks on the roadway, commonly called "peeling".

349.13 TAKING, INJURING OR TAMPERING WITH VEHICLE.

(a) No person shall drive a vehicle, not his or her own, without consent of the owner thereof, and with intent temporarily to deprive such owner of his or her possession of such vehicle, but without intent to steal the vehicle. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person. Any person who assists in, or is a party or accessory to or an accomplice in any such unauthorized taking or driving, shall also be guilty of a violation of this section.
(WVaC 17A-8-4)

(b) No person either individually or in association with one or more persons shall willfully injure or tamper with any vehicle or break or remove any part or parts of or from a vehicle without the consent of the owner.

No person with intent to commit any malicious mischief, injury or other crime shall climb into or upon a vehicle whether it is in motion or at rest or with like intent attempt to manipulate any of the levers, starting mechanism, brakes or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent set in motion any vehicle while the same is at rest and unattended.

(WVaC 17A-8-6)

349.14 DRIVING UPON SIDEWALK, STREET LAWN OR CURB.

(a) No person shall drive any vehicle, other than a bicycle, upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.

(b) No person shall drive a vehicle on a street lawn area or the curb of a street, except upon a permanent or duly authorized temporary driveway or when otherwise lawfully authorized.

349.15 SHORTCUTTING; AVOIDING TRAFFIC CONTROL DEVICES.

(a) No person shall operate a motor vehicle across public or private property marked with signs "No Through Traffic" or words of similar import for the purpose of passing from one roadway to another.

(b) No person shall operate a motor vehicle across public or private property for the purpose of avoiding compliance with a traffic control device.

(c) It shall be prima-facie evidence of a violation of this section for the operator of a motor vehicle to cross public or private property as provided herein without using the service of such property, stopping the engine or both.

349.16 COASTING PROHIBITED.

The operator of any motor vehicle when traveling on a down grade on any street, alley or highway shall not coast with the gears of such vehicle in neutral.

349.17 DRIVING THROUGH SAFETY ZONE.

No operator of a vehicle shall drive the same over or through a safety zone.

349.18 DRIVING UPON STREET POSTED AS CLOSED FOR REPAIR.

No person shall drive upon, along or across a street or highway, or any part thereof, which has been closed in the process of its construction, reconstruction or repair, and posted with appropriate signs by the authority having jurisdiction to close such street or highway.

349.19 OBSTRUCTION OF TRAFFIC.

No person shall operate, stop, stand or park any motor vehicle on any street or alley within the Municipality so as to obstruct or hinder the free flow of motor vehicle traffic except in compliance with a lawful order of a police officer or in compliance with a traffic control sign, signal or marking.

349.20 VEHICLE SECURITY.

Every owner or registrant of a motor vehicle shall maintain security upon such vehicle as required by West Virginia Code Article 17D-2A, and no person shall knowingly drive or operate on any street within the Municipality any motor vehicle upon which security is required by such Article unless the security is provided, and violation of any of the provisions of West Virginia Code Article 17D-2A including failure to have a certificate of insurance, if required, shall constitute a violation under this section.

349.21 LITTERING FROM A MOTOR VEHICLE.

(a) It is unlawful for any driver or passenger of a motor vehicle or other conveyance to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown, any litter from a motor vehicle or other conveyance in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the State or within one hundred feet of the waters of this State, except in a proper litter or other solid waste receptacle.

(b) For purposes of this section, “litter” means all waste material including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof, or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

(c) When there is more than one occupant in a motor vehicle or other conveyance and it can not be determined which occupant is responsible for violating this section, the driver shall be presumed to be responsible for the violation.
(WVaC 17C-14-14)

349.22 PROHIBITED USE OF AN ELECTRONIC COMMUNICATIONS DEVICE.

(a) Except as provided in subsection (c) of this section, a person may not drive or operate a motor vehicle on a public street or highway while:

- (1) Texting; or
- (2) Using a cell phone or other electronic communications device, unless the use is accomplished by hands-free equipment.

(b) For purposes of this section, the following terms shall mean:

- (1) “Cell phone” means a cellular, analog, wireless or digital telephone.
- (2) “Driving” or “operating a motor vehicle” means operating a motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays, but does not include operating a motor vehicle after the driver has moved the vehicle to the side of, or off, a highway and halted in a location where the vehicle can safely remain stationary.
- (3) “Electronic communication device” means a cell telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, 2-way messaging device, electronic game, or portable computing device. For the purposes of this section, an “electronic communication device” does not include:
 - A. Voice radios, mobile radios, land mobile radios, commercial mobile radios or two way radios with the capability to transmit and receive voice transmissions utilizing a push-to-talk or press-to-transmit function; or
 - B. Other voice radios used by a law enforcement officer, an emergency services provider, an employee or agent of public safety organizations, first responders, Amateur Radio Operators (HAM) licensed by the Federal Communications Commission and school bus operators.
- (4) “Engaging in a call” means when a person talks into or listens on an electronic communication device, but shall not include when a person dials or enters a phone number on a pushpad or screen to initiate the call.
- (5) “Hands-free electronic communication device” means an electronic communication device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such electronic communication device, by which a user engages in a call without the use of either hand or both hands.

- (6) “Hands-free equipment” means the internal feature or function of a hands-free electronic communication device or the attachment or addition to a hands-free electronic communication device by which a user may engage in a call or text without the use of either hand or both hands.
- (7) “Texting” means manually entering alphanumeric text into, or reading text from, an electronic communication device, and includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page or engaging in any other form of electronic text retrieval or entry, for present or future communication. For purposes of this section, “texting” does not include the following actions:
- A. Reading, selecting or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device by pressing the device in order to initiate or receive a phone call or using voice commands to initiate or receive a telephone call;
 - B. Inputting, selecting or reading information on a global positioning system or navigation system; or
 - C. Using a device capable of performing multiple functions, including fleet management systems, dispatching devices, smart phones, citizens band radios or music players, for a purpose that is not otherwise prohibited in this section.
- (8) “Using a cell phone or other electronic communication device” means holding in a person’s hand or hands an electronic communication device while:
- A. Viewing or transmitting images or data;
 - B. Playing games;
 - C. Composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages or other electronic data; or
 - D. Engaging in a call.
- (c) Subsection (a) of this section shall not apply to:
- (1) A law enforcement officer, a firefighter, an emergency medical technician, a paramedic or the operator of an authorized emergency vehicle in the performance of their official duties;
 - (2) A person using an electronic communication device to report to appropriate authorities a fire, a traffic accident, a serious road hazard, or a medical or hazardous materials emergencies.
 - (3) The activation or deactivation of hands-free equipment or a function of hands-free equipment.
- (d) This section does not supersede the provisions of West Virginia Code 17B-2-3a, or any more restrictive provisions for drivers of commercial motor vehicles prescribed by the provisions of West Virginia Code 17E-1-1 et seq. or federal law or rule.
- (e) No policy providing liability coverage for personal lines insurance shall contain a provision which may be used to deny coverage or exclude payment of any legal damages recoverable by law for injuries proximately caused by a violation of this section, as long as such amounts are within the coverage limits of the insured.
(WVaC 17C-14-15)

349.99 PENALTY.

(a) General Article Penalty. Whoever violates any provision of this article for which no other penalty is provided shall be fined not more than one hundred dollars (\$100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars (\$200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars (\$500.00).

- (b) (1) Any person who violates Section 349.061 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both fined and imprisoned.
- (2) If violation of Section 349.061 results in property damage in addition to any other penalty imposed, driving privileges of the persons causing the property damage shall be suspended for ninety days.
- (3) If violation of Section 349.061 results in injury to another person in addition to any other penalty imposed, the driving privileges of the person causing the injury shall be suspended for six months.
- (4) If violation of Section 349.061 results in the death of another person in addition to any other penalty imposed, the driving privileges of the person causing the death shall be suspended for two years.
- (5) Any person who violates Section 349.061 and while doing so also violates Section 333.01 shall be prosecuted under appropriate State law.
(WVaC 17C-14-9a)

(c) Taking, Injuring or Tampering With Vehicle. Whoever violates Section 349.13 shall, for a first offense, be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both. (WVaC 17A-11-1)

(d) Vehicle Security. Whoever violates Section 349.20 shall be fined not less than two hundred dollars (\$200.00) or more than five thousand dollars (\$5,000) or imprisoned not more than thirty days, or both. (WVaC 17D-2A-9)

(e) Electronic Communication Devices.

- (1) Any person who violates the provisions of Section 349.22 is guilty of a traffic offense and, shall for a first offense be fined one hundred dollars (\$100.00); for a second offense be fined two hundred dollars (\$200.00); and for a third or subsequent offense be fined three hundred dollars (\$300.00). No court costs or other fees shall be assessed for a violation of Section 349.22.
- (2) Notwithstanding any other provision of this code to the contrary, points may not be entered on any driver's record maintained by the Division of Motor Vehicles as a result of a violation of Section 349.22, except for the third and subsequent convictions of the offense, for which three points shall be entered on any driver's record maintained by the Division of Motor Vehicles.
- (3) Driving or operating a motor vehicle on a public street or highway while texting shall be enforced as a primary offense. Driving or operating a motor vehicle on a public street or highway while using a cell phone or other electronic communication device without hands-free equipment shall be enforced as a secondary offense until July 1, 2013 when it shall be enforced as a primary offense for purposes of citation.
- (4) Nothing contained in this section shall be construed to authorize seizure of a cell phone or electronic device by any law enforcement agency.
(WVaC 17C-14-15)

**ARTICLE 351
Licensing Generally**

351.01 Registration, certificate of title required. 351.02 Registration card. 351.03 Display of registration plates. 351.04 Operation of vehicle without evidence of registration; use of temporary facsimile. 351.05 Improper use of registration card, plate or permit. 351.06 Driver or motorcycle license required.	351.07 Persons exempt from license. 351.08 Display of license. 351.09 Certain acts prohibited. 351.10 Driving under suspension or revocation. 351.11 Owner or operator allowing another to drive. 351.99 Penalty.
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CROSS REFERENCES

Impounding unlicensed vehicle - see TRAF. 303.07
 Illumination of license plate - see TRAF. 345.05(c)

351.01 REGISTRATION, CERTIFICATE OF TITLE REQUIRED.

No person shall drive or move and no owner shall knowingly permit to be driven or moved upon any street or highway any vehicle of a type required to be registered under West Virginia Code Chapter 17-A which is not registered or for which a certificate of title has not been issued or applied for or for which the appropriate fee has not been paid when and as required, except as otherwise permitted by the provisions therein: provided, that in the event of the sale of a vehicle by a person other than a registered dealer, the person purchasing the same may, for a period of not more than ten days, operate such vehicle under the registration of its previous owner and display the registration thereof: provided further that he shall have and display on the demand of any proper officer the consent in writing of such previous owner so to use such registration.
 (WVaC 17A-3-1)

351.02 REGISTRATION CARD.

Every owner upon receipt of a registration card shall write his signature thereon with pen and ink in the space provided. Every such registration card shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle who shall display the same upon demand of a police officer or any officer or employee of the Department of Motor Vehicles.
 (WVaC 17A-3-13)

351.03 DISPLAY OF REGISTRATION PLATES.

(a) Registration plates issued for vehicles required to be registered shall be attached to the rear thereof except that on truck tractors and road tractors designed and constructed to pull trailers or semi-trailers, the registration plate shall be mounted to the front.

(b) Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible.

(c) Notwithstanding the provisions of subsection (b) of this section, an owner of a motor vehicle with a Class G registration as defined in West Virginia Code 17A-10-1 may choose to:

- (1) Display a standard, Class G registration plate in a horizontal position; or
- (2) Display a specially designed Class G registration plate in a vertical position.
(WVaC 17A-3-15)

351.04 OPERATION OF VEHICLE WITHOUT EVIDENCE OF REGISTRATION; USE OF TEMPORARY FACSIMILE.

No person shall operate or park, nor shall an owner knowingly permit to be operated or parked upon any street or highway any vehicle required to be registered unless there is attached thereto and displayed thereon or is in the possession of the operator when and as required by this Traffic Code, a valid registration card and registration plate or plates issued therefor by the Department of Motor Vehicles for the current registration year except as otherwise expressly permitted in West Virginia Code Chapter 17-A.

In the event that the registration plate or plates originally issued are lost, destroyed or stolen, a temporary facsimile of the plate or plates, showing the number of the same, may be attached to the vehicle by the owner for a period of not more than fifteen days, or until a new plate or plates are issued by the Department whichever is earlier: provided, that no such facsimile shall be used and no such vehicle shall be driven upon the streets or highways of this Municipality until the owner has notified in writing the State Police of the loss of such registration plate or plates.
(WVaC 17A-9-2)

351.05 IMPROPER USE OF REGISTRATION CARD, PLATE OR PERMIT.

No person shall lend to another any certificate of title, registration card, registration plate, special plate or permit issued to him if the person desiring to borrow the same would not be entitled to the use thereof, nor shall any person knowingly permit the use of any of the same by one not entitled thereto, nor shall any person display upon a vehicle any registration card, registration plates or permit not issued for such vehicle or not otherwise lawfully used thereon under this Traffic Code. (WVaC 17A-9-3)

351.06 DRIVER OR MOTORCYCLE LICENSE REQUIRED.

(a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a street or highway in this Municipality or upon any subdivision street, used by the public generally unless the person has a valid driver's license issued under the provisions of the West Virginia Code for the type or class of vehicle being driven.

Any person licensed to operate a motor vehicle as provided in the West Virginia Code may exercise the privilege thereby granted as provided in the West Virginia Code and, except as otherwise provided by law, shall not be required to obtain any other license to exercise such privilege by any county, municipality or local board or body having authority to adopt local police regulations.

(b) No person, except those hereinafter expressly exempted, shall drive any motorcycle upon a street or highway in this Municipality or upon any subdivision street, used by the public generally unless the person has a valid motorcycle license, a valid license which has been endorsed under West Virginia Code 17B-2-7b for motorcycle operation or has a valid motorcycle instruction permit. (WVaC 17B-2-1)

351.07 PERSONS EXEMPT FROM LICENSE.

The following persons are exempt from the license required under Section 351.06:

- (a) Any person while operating a motor vehicle in the armed services of the United States while in the performance of his official duties;
- (b) A nonresident who is at least sixteen years of age and who has in his or her immediate possession a valid driver's license issued to the person in the person's home state or country unless the Commissioner determines the person's home state or country does not extend the same privileges to a resident of this State, may operate a motor vehicle in this State only as a noncommercial driver for a period not to exceed ninety days in any one calendar year;
- (c) A nonresident who is at least sixteen years of age, who has in the person's immediate possession a valid driver's license issued to the person in the person's home state or country and who is employed in this State, or owns, maintains or operates a place or places of business in this State, or engages in any trade, profession or occupation in this State, in addition to the driving privileges extended under subsection (b) hereof, unless the Commissioner determines the person's home state or country does not extend the same privileges to a resident of this State, may operate a motor vehicle in this State only as a noncommercial driver in traveling to and from the person's place or places of employment, place or places of business or place or places at which the person engages in the trade, profession or occupation and in the discharge of the duties of the person's employment, business, trade, profession or occupation if the duties are such that, if performed by a resident of the State of West Virginia over the age of eighteen years of age, the resident would not be required under the provisions of West Virginia Code Chapter 17 to obtain a Class A, B, C or D driver's license. However, this subsection shall not exempt any person who is required to obtain a West Virginia driver's license in accordance with the provisions of West Virginia Code 17B-2-1a;
- (d) A nonresident who is at least eighteen years of age and who has in his or her immediate possession a valid commercial driver's license issued to the person in his or her home state or country and which meets the requirements of the federal commercial motor vehicle act of 1986, Title XI of public law 99-570 and unless the Commissioner determines the person's home state or country does not extend the same privilege to a resident of this State may operate a motor vehicle in this State either as a commercial driver subject to the age limits applicable to commercial driver in this State, or as a noncommercial driver subject to the limitations imposed on nonresident drivers in subsections (b) and (c) hereof;

- (e) Any person who is a student, properly enrolled and registered in an accredited school, college or university in this State, who is at least sixteen years of age and who has in his or her immediate possession a valid driver's license issued to the person in the person's home state, notwithstanding the limitations of subsections (b) and (c) hereof may operate motor vehicle in this State only as noncommercial driver: provided, that the state of which the person is a resident shall extend the same privileges to residents of this State. This exemption shall be canceled immediately when the student is graduated from school, college or university or is expelled or ceases to be a student. (WVaC 17B-2-2)

351.08 DISPLAY OF LICENSE.

Every licensee shall have his or her driver's license in such person's immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a magistrate, municipal judge, circuit court judge, peace officer or an employee of the Division of Motor Vehicles. However, no person charged with violating this section shall be convicted if such person produces in court or the office of the arresting officer a driver's license theretofore issued to such person and valid at the time of such person's arrest.
(WVaC 17B-2-9)

351.09 CERTAIN ACTS PROHIBITED.

No person shall commit any one of the following acts:

- (a) Display or cause or permit to be displayed or have in his possession any fictitious or fraudulently altered driver's or commercial driver's license or nonoperator's identification;
- (b) Lend his driver's or commercial driver's license or nonoperator's identification to any other person or knowingly permit the use thereof by another;
- (c) Display or represent as one's own any driver's or commercial driver's license or nonoperator's identification not issued to him;
- (d) Use a false or fictitious name in any application for a driver's or commercial driver's license or nonoperator's identification or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application;
- (e) Permit any unlawful use of a driver's or commercial driver's license or nonoperator's identification issued to him; or
- (f) Do any act forbidden or fail to perform any act required by this Traffic Code or West Virginia Code Chapter 17.

(WVaC 17B-4-1)

351.10 DRIVING UNDER SUSPENSION OR REVOCATION.

No person shall drive a motor vehicle on any public street or highway of this Municipality at a time when his privilege so to do has been lawfully suspended or revoked.
(WVaC 17B-4-3)

351.11 OWNER OR OPERATOR ALLOWING ANOTHER TO DRIVE.

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any street or highway by any person who is not authorized hereunder or in violation of any of the provisions of this Traffic Code.
(WVaC 17B-4-4)

351.99 PENALTY.

(a) General Article Penalty. Whoever violates any provision of this article for which no other penalty is provided shall be fined not more than five hundred dollars (\$500.00); for a second or subsequent violation of the same provision such person shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.

(b) Driving Under Suspension or Revocation.

(1) Except as otherwise provided in West Virginia Code 17B-4-3(b) or (d), or subsection (b)(2) or (3) hereof, whoever drives a motor vehicle on any street or highway of this Municipality at a time when his or her privilege so to do has been lawfully suspended or revoked shall, for the first offense, be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); for the second offense, such person, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); for the third or any subsequent offense, such person shall be imprisoned for a period of thirty days and, in addition to such mandatory jail sentence, shall be fined not less than one hundred fifty dollars (\$150.00) nor more than five hundred dollars (\$500.00).

A record of the conviction of any person under this section upon a charge of driving a vehicle while the license of such person was suspended lawfully shall be sent to the State Department of Motor Vehicles.

(2) Any person who drives a motor vehicle on any public highway at a time when his or her privilege to do so has been lawfully revoked for driving under the influence of alcohol, controlled substances or other drugs, or any combination thereof, or for driving while having an alcoholic concentration in his or her blood of eight hundredths of one percent or more, by weight, or for refusing to take a secondary chemical test of blood alcohol content, for the first offense shall be imprisoned thirty days and in addition to the mandatory jail sentence, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); for the second offense, shall be imprisoned thirty days and in addition to the mandatory jail sentence, shall be fined not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000); for the third or any subsequent offense, the person is guilty of a felony and shall be prosecuted under appropriate State law.

(3) Any person who drives a motor vehicle on any public highway at a time when his or her privilege to do so has been lawfully suspended for driving while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, shall be imprisoned for twenty-four hours or shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or both; for the second offense, the person shall be confined in jail for a period of thirty days, and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); for the third or any subsequent offense, the person is guilty of a felony and shall be prosecuted under appropriate State law.

- (4) An order for home detention by the court pursuant to the provisions of West Virginia Code Article 62-11B may be used as an alternative sentence to any period of incarceration required by this section.

(c) Additional Penalties. Whoever violates Sections 351.02, 351.03, 351.05, 351.09 or 351.11 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.

ARTICLE 353
Commercial Drivers

353.01 Definitions. 353.02 Limitation on number of driver's licenses. 353.03 Employer responsibilities. 353.04 Commercial driver's license required.	353.05 Exemptions. 353.06 Drivers prohibited from operating with any alcohol in system. 353.99 Penalty.
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CROSS REFERENCES

Uniform Commercial Driver's License Act - see W.Va. Code
Art. 17E-1
Commercial vehicles - see TRAF. Art. 347
Driver's licensing - see TRAF. Art. 351

353.01 DEFINITIONS.

Notwithstanding any other provision of this Traffic Code, the following definitions apply to this article:

- (a) "Alcohol" means:
- (1) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol and isopropanol;
 - (2) Beer, ale, port or stout and other similar fermented beverages (including sake or similar products) of any name or description containing one half of one percent (0.5%) or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;
 - (3) Distilled spirits or that substance known as ethyl alcohol, ethanol or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced); or
 - (4) Wine of not less than one half of one percent (0.5%) of alcohol by volume.
- (b) "Alcohol concentration" means:
- (1) The number of grams of alcohol per 100 milliliters of blood; or
 - (2) The number of grams of alcohol per 210 liters of breath; or
 - (3) The number of grams of alcohol per sixty-seven milliliters of urine; or
 - (4) The number of grams of alcohol per eighty-six milliliters of serum.
- (c) "Commercial driver license" means a license issued in accordance with the requirements of West Virginia Code Article 17E-1 to an individual which authorizes the individual to drive a class of commercial motor vehicle.

- (d) "Commercial driver instruction permit" means a permit issued pursuant to West Virginia Code 17E-1-9(d).
- (e) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:
 - (1) If the vehicle has a gross combination vehicle weight rating of 26,001 pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating of more than 10,000 pounds;
 - (2) If the vehicle has a gross vehicle weight rating of more than 26,001 pounds or more;
 - (3) If the vehicle is designed to transport sixteen or more passengers, including the driver; or
 - (4) If the vehicle is of any size transporting hazardous materials as defined in this section.
- (f) "Conviction" means an unvacated adjudication of guilt; a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal or proceeding; an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court; a plea of guilty or nolo contendere accepted by the court or the payment of a fine or court cost, or violation of a condition of release without bail regardless of whether or not the penalty is rebated, suspended, or probated.
- (g) "Disqualification" means any of the following three actions:
 - (1) The suspension, revocation or cancellation of a driver's license by the state or jurisdiction of issuance.
 - (2) Any withdrawal of a person's privilege to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control other than parking or vehicle weight except as to violations committed by a special permittee on the coal resource transportation system or vehicle defect violations.
 - (3) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. Part §391 (2004).
- (h) "Drive" means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of Section 353.06 "drive" includes operation or physical control of a motor vehicle anywhere in this Municipality.
- (i) "Driver" means any person who drives, operates or is in physical control of a commercial motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a commercial driver license.
- (j) "Driver license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.
- (k) "Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors (while in the course of operating a commercial motor vehicle) who are either directly employed by or under lease to drive a commercial motor vehicle for an employer.
- (l) "Employer" means any person, including the United States, a state or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

- (m) "Farm vehicle" includes a motor vehicle or combination vehicle registered to the farm owner or entity operating the farm and used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants and in the transportation of agricultural or horticultural supplies and machinery to such farms or orchards to be used thereon.
- (n) "Farmer" includes owner, tenant, lessee, occupant or person in control of the premises used substantially for agricultural or horticultural pursuits, who is at least eighteen years of age with two years licensed driving experience.
- (o) "Farmer vehicle driver" means the person employed and designated by the farmer to drive a farm vehicle as long as driving is not his sole or principal function on the farm, who is at least eighteen years of age with two years licensed driving experience.
- (p) "Motor vehicle" means every vehicle which is self-propelled, and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.
- (q) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle as a result of a determination by a law-enforcement officer, an authorized enforcement officer of a federal, state, Canadian, Mexican, county or local jurisdiction including any special agent of the Federal Motor Carrier Safety Administration pursuant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or compatible laws or the North American uniform out-of-service criteria that an imminent hazard exists.
- (r) "Violation of an out-of-service order" means:
 - (1) The operation of a commercial motor vehicle during the period the driver was placed out of service; or
 - (2) The operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made.
(WVaC 17E-1-3)

353.02 LIMITATION ON NUMBER OF DRIVER'S LICENSES.

No person who drives a commercial motor vehicle shall have more than one driver license at one time. (WVaC 17E-1-4)

353.03 EMPLOYER RESPONSIBILITIES.

(a) Each employer shall require the applicant to provide the information specified in West Virginia Code 17E-1-5.

(b) No employer may knowingly allow, permit, require or authorize a driver to drive a commercial motor vehicle during any period in which the driver:

- (1) Has a driver's license suspended, revoked or canceled by a state; has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle;
- (2) Has more than one driver's license at one time.
- (3) Or the commercial motor vehicle he or she is driving or the motor carrier operation, is subject to an out-of-service order;
- (4) Is in violation of federal, state or local law or regulation pertaining to railroad highway grade crossings; or

- (5) Is in violation of any provision of 49 C.F.R., Part §382 related to controlled substances and alcohol use and testing.
(WVaC 17E-1-6)

353.04 COMMERCIAL DRIVER'S LICENSE REQUIRED.

(a) Except when driving under a commercial driver's instruction permit accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person shall drive a commercial motor vehicle unless the person holds a commercial driver's license and applicable endorsements valid for the vehicle they are driving.

(b) No person shall drive a commercial motor vehicle while their driving privilege is suspended, revoked, canceled, expired, subject to a disqualification, or in violation of an out-of-service order.

(c) Drivers of a commercial motor vehicle shall have a commercial driver's license in their possession at all times while driving.
(WVaC 17E-1-7)

353.05 EXEMPTIONS.

(a) Farmers. Bona fide farmers or farm vehicle drivers, as defined, operating a vehicle otherwise covered by the commercial driver's license requirements may be exempted from the provisions of this article only if the vehicle used is:

- (1) Driven by a farmer or farm vehicle driver;
- (2) Used only to transport either agricultural products, farm machinery, farm supplies, to or from a farm;
- (3) Not used in the operation of a common or contract motor carrier; and
- (4) Used within 150 miles of the qualifying farm. Farmers who wish to be exempted from the commercial driver's license requirements must apply to the Division of Motor Vehicles for a certificate of exemption.

(b) Military Personnel. Active duty military personnel operating vehicles being used for military purposes are exempted from the provisions of this article in accordance with the provisions of 49 CFR § 383.3 (c)(2006).

(c) Fire Fighting and Rescue Equipment. Operators of vehicles authorized to hold an authorized emergency vehicle permit for use of red signal lights only are exempt from the provisions of this article while the authorized emergency vehicle permit is in force. Vehicles in this class include, but are not limited to, fire fighters and rescue equipment:

- (1) Owned and operated by state, county and municipal fire departments.
- (2) Owned and operated by state, county and municipal civil defense organizations.
- (3) Owned and operated by a manufacturer engaged in a type of business that requires fire fighter equipment to protect the safety of their plants and its employees.
- (4) Owned and operated by volunteer fire departments.

(d) Operators of Off-Road Construction and Mining Equipment. Operators of equipment which, by its design, appearance and function, is not intended for use on a public road, including, without limitation, motorscrapers, backhoes, motorgraders, compactors, excavators, tractors, trenches and bulldozers, are exempt from the provisions of this article: Provided, that the exemption recognized by this subsection shall not be construed to permit the operation of such equipment on any public road except such operation as may be required for a crossing of such road: Provided, however, that no such equipment may be operated on a public road for a distance exceeding five hundred feet from the place where such equipment entered upon the public road.

(e) Exempt Vehicles. The Federal Motor Carrier Safety Improvement Act of 1999 exempts vehicles used exclusively for personal use such as recreation vehicles and rental trucks used only to transport the driver's personal or household property. (WVaC 17E-1-8)

353.06 DRIVERS PROHIBITED FROM OPERATING WITH ANY ALCOHOL IN SYSTEM.

(a) In addition to any other penalties provided by the West Virginia Code or these Codified Ordinances, any person who drives, operates or is in physical control of a commercial motor vehicle while having an alcohol concentration in his or her blood, breath or urine of four hundredths of one percent or more, by weight, shall be imprisoned for not less than twenty-four hours nor more than thirty days, and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). A person convicted of a second or any subsequent offense under the provisions of this subsection shall be imprisoned for a period of thirty days, and the court may, in its discretion, impose a fine of not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000).

(b) A person who violates the provisions of subsection (a) of this section shall be treated in the same manner set forth in West Virginia Code 17C-19-3, as if he or she had been arrested for driving under the influence of alcohol or of any controlled substance.

(c) In addition to any other penalties provided by the West Virginia Code or these Codified Ordinances, a person who drives, operates or is in physical control of a commercial motor vehicle having any measurable alcohol in such person's system or who refuses to take a preliminary breath test to determine such person's blood alcohol content as provided by West Virginia Code 17E-1-15 shall be placed out of service for twenty-four hours by the arresting law-enforcement officer. (WVaC 17E-1-14)

353.99 PENALTY.

Unless another penalty is provided in this article, whoever violates any provision of this article shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000), or imprisoned for not more than thirty days, or both except that for the second violation of Section 353.04, the offender shall be fined not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000) or imprisoned not more than thirty days, or both. For the third or any subsequent conviction for violation of Section 353.04, the offender shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500), or imprisoned for not more than thirty days, or both.
(WVaC 17E-1-25)

ARTICLE 354
Motorized Scooters

354.01	Definitions.	354.05	Authorizing or permitting minor to commit violation.
354.02	Prohibitions.	354.06	Liability.
354.03	Exceptions.	354.99	Penalty.
354.04	Exemptions.		

CROSS REFERENCES

All-terrain vehicles - see TRAF. Art. 355

354.01 DEFINITIONS.

Except as otherwise provided in this article, the following words and phrases shall have the meanings set forth below:

- (a) "Minor" means any person under the age of eighteen years.
- (b) "Motorized scooter" means any non-balancing, tandem two-wheeled device, or three or four wheeled, self balancing device, that has handlebars, is designed to be stood upon or ridden by the operator, and is powered by a motor having a maximum piston displacement of less than fifty cubic centimeters or an electric drive motor, that is capable of a maximum speed of not more than twenty-five miles per hour on a flat surface. "Motorized scooter" does not include a "motorcycle" as defined by W. Va. Code 17C-1-4, a "moped" as defined by W. Va. Code 17C-1-5a, a "motor-driven cycle" as defined by W. Va. Code 17C-1-5, an "electric personal assistive mobility device" or "EPAMD" as defined by W. Va. Code 17C-1-66, or a wheelchair as defined within.
- (c) "Wheelchair" means a motorized or non-motorized wheeled device having a seat or saddle, and designed for, and used by a person with disabilities.
(Ord. 2-8-05.)

354.02 PROHIBITIONS.

The riding, operation, or other use of motorized scooters for transportation or recreational purposes within or upon the streets, alleys, sidewalks, or parking lots of the City, and other realty owned, leased or controlled by the City or any of its boards, authorities, or commissions is prohibited. (Ord. 2-8-05.)

354.03 EXCEPTIONS.

Notwithstanding any other provision of this article, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use a motorized scooter upon a designated parade route, when such person is a duly registered and recognized participant in any such permitted parade, provided that such motorized scooter riding or operation occurs in conjunction with said parade.
(Ord. 2-8-05.)

354.04 EXEMPTIONS.

The Federal Government, the State of West Virginia, and its political subdivisions are exempt from the prohibitions contained herein, when any such motorized scooter is used for government purposes.
(Ord. 2-8-05.)

354.05 AUTHORIZING OR PERMITTING MINOR TO COMMIT VIOLATION.

No person shall authorize or knowingly permit a minor to violate any provision within this article. Any such violation or knowingly permitting any such minor to violate the provisions of this article shall constitute a criminal violation hereof and shall subject such person to the criminal penalties set forth in this article. The citing of any person pursuant to this section shall not be reason to prohibit the police officer from also citing the driver of said motorized scooter.
(Ord. 2-8-05.)

354.06 LIABILITY.

Nothing contained within this article is intended, nor shall be construed, so as to create or form the basis for any civil or administrative liability whatsoever on the part of the City or any of its officers, officials, employees, or agents for any injury or damage resulting to any person as a consequence of any action or inaction on the part of the City related, in any manner, to the enforcement or non-enforcement of this article by the City's officers, officials, employees, or agents. (Ord. 2-8-05.)

354.99 PENALTY.

(a) Any person who violates Section 354.02 shall constitute the commission of a misdemeanor criminal offense, and any officer of the Police Department of the City or any other officer of any other police agency exercising proper jurisdiction within the corporate limits of the City is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation of Section 354.02. Any person convicted of a first offense established hereunder shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00). Any person convicted of a second or subsequent offense established hereunder shall be fined not less than two hundred fifty dollars (\$250.00).

(b) Any person who violates Section 354.05 shall constitute the commission of a misdemeanor criminal offense, and any officer of the Police Department of the City or any other officer of any other police agency exercising proper jurisdiction within the corporate limits of the City is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation of Section 354.05. Any person convicted of a first offense established hereunder shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00). Any person convicted of a second or subsequent offense established hereunder shall be fined not less than two hundred fifty dollars (\$250.00).
(Ord. 2-8-05.)

ARTICLE 355
All-Terrain Vehicles

355.01	Defined.	355.05	Liability.
355.02	Operation restricted.	355.06	Parental responsibility.
355.03	Enforcement.	355.07	Severability.
355.04	Exemptions.	355.99	Penalty.

CROSS REFERENCES

State law provisions - see W. Va. Code Art. 17F-1

355.01 DEFINED.

An “all-terrain vehicle” (ATV) shall be defined as any motor vehicle designed for off-highway use; and having a seat or saddle designed to be straddled by the operator, with the handle bars for steering control; or, any two (2) or four (4) wheel drive utility vehicle not required under the laws of the State of West Virginia to be inspected on a yearly basis or possessed of a registration card.
(Ord. 11-13-01.)

355.02 OPERATION RESTRICTED.

The riding, operation, or other use of “all-terrain vehicles” within or upon the streets, alleys, sidewalks, parking lots and other governmentally owned, leased, or controlled property situated within the corporate limits of the City is prohibited except as otherwise provided in this article.
(Ord. 11-13-01.)

355.03 ENFORCEMENT.

Any violation of Section 355.02 constitutes commission of a misdemeanor criminal offense and Council hereby specifically authorizes, empowers, and directs all officers of the Police Department, or any officer of any other law enforcement agency exercising proper jurisdiction within the corporation limits of the City to issue a citation and charge any person whomsoever violates the prohibition outlined in Section 355.02.
(Ord. 11-13-01.)

355.04 EXEMPTIONS.

(a) Notwithstanding any old provision of this article, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use an “all-terrain vehicle” upon any private property located within the corporate limits of the City.

(b) Notwithstanding any old provision of this article, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use an “all-terrain vehicle” upon a designated parade route, when such person is a duly registered and recognized participant in any parade or festival conducted by the City, or any such other activities sponsored and approved by Council, provided that such “all-terrain vehicle” riding, operation, or other such use occurs in conjunction with the said parade or other recognized and approved activity.
(Ord. 11-13-01.)

355.05 LIABILITY.

Nothing contained within this article is intended, nor shall be construed so as to create or form the basis for any civil or administrative liability whatsoever on the part of the City, or on any of its officers, officials, employees, or agents, for any injury or damage resulting to any person as a consequence of any action or inaction on the part of the City, as related in any manner to the enforcement and unenforcement of this article by the City’s officers, officials, employees, or agents.
(Ord. 11-13-01.)

355.06 PARENTAL RESPONSIBILITY.

The parent or other guardian of any person not having obtained the age of eighteen years shall not authorize or knowingly permit any such minor to violate any provision herein. Any such authorization or knowingly permitting any such minor to violate the provisions of this article shall constitute a criminal violation hereof and shall subject such parent or other guardian, along with any minor violating the provisions hereof, to the same criminal sanctions as set forth in this article.
(Ord. 11-13-01.)

355.07 SEVERABILITY.

The provisions of this article are severable in the event that any provision or any part hereof shall be held invalid for any reason by any Court exercising its jurisdiction, then such invalidity shall not be deemed to effect or impair any other provisions or parts of this article not specifically held to be invalid. It is hereby declared to be the intent of Council that this article would have been adopted if any such invalid provisions or parts hereof had not been included herein.
(Ord. 11-13-01.)

355.99 PENALTY.

(a) Any person adjudged guilty and convicted of any first offense established hereunder by the Municipal Court, shall be subject to a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), plus all applicable Court costs.

(b) Any person adjudged guilty and convicted of any second offense or further offenses established hereunder by the Municipal Court, shall be subject to a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), plus all applicable Court costs.

(Ord. 11-13-01.)

CHAPTER SEVEN - Parking
Art. 361. Parking Generally.

ARTICLE 361
Parking Generally

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| <p>361.01 Prohibition against parking on streets or highways.</p> <p>361.02 Police may remove illegally stopped vehicles.</p> <p>361.03 Prohibited stopping, standing or parking places.</p> <p>361.04 Vehicles parked on private property.</p> <p>361.05 Manner of angle and parallel parking.</p> <p>361.06 Accessible parking.</p> <p>361.07 Abandoned motor vehicles.</p> <p>361.075 Junk vehicles on private property.</p> | <p>361.08 Parking for certain purposes prohibited.</p> <p>361.09 Truck loading zones.</p> <p>361.10 Bus stops and taxicab stands.</p> <p>361.11 Parking in alleys and narrow streets; exceptions.</p> <p>361.12 Registered owner prima-facie liable for unlawful parking.</p> <p>361.13 Seventy-two hour parking.</p> <p>361.14 Parking of trucks, vans, tractor-trailers and other tandem vehicles.</p> <p>361.99 Penalty.</p> |
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CROSS REFERENCES

See sectional histories for similar State law
 Authority to regulate the standing or parking of vehicles - see W. Va. Code 17C-2-8(a)(1)
 Authority to regulate parallel and angle parking - see W. Va. Code 17C-13-4
 Impounding of abandoned vehicles - see TRAF. 303.07
 Duty to stop engine, set brake on grade and remove key - see TRAF. 349.01

361.01 PROHIBITION AGAINST PARKING ON STREETS OR HIGHWAYS.

(a) Upon any street or highway outside of a business or residence district no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the street or highway when it is practicable to stop, park or so leave such vehicle off such part of the street or highway, but in every event an unobstructed width of the street or highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of 200 feet in each direction upon such highway or street.

(b) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a street or highway in such a manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.
(WVaC 17C-13-1)

361.02 POLICE MAY REMOVE ILLEGALLY STOPPED VEHICLES.

(a) Whenever any police officer finds a vehicle standing upon a street or highway in violation of Section 361.01, such officer is hereby authorized to move such vehicle or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of such street or highway.

(b) Whenever any police officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.
(WVaC 17C-13-2)

361.03 PROHIBITED STOPPING, STANDING OR PARKING PLACES.

(a) No person shall stop, stand or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device, in any of the following places:

- (1) On a sidewalk;
- (2) In front of a public or private driveway;
- (3) Within an intersection;
- (4) Within fifteen feet of a fire hydrant;
- (5) In a properly designated fire lane;
- (6) On a crosswalk;
- (7) Within twenty feet of a crosswalk at an intersection;
- (8) Within thirty feet upon the approach to any flashing beacon, stop sign or traffic control signal located at the side of a roadway;
- (9) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;
- (10) Within fifty feet of the nearest rail of a railroad crossing;

- (11) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of such entrance (when properly signposted);
- (12) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;
- (13) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
- (14) Upon any bridge or other elevated structure upon a street or highway or within a street or highway tunnel;
- (15) At any place where signs prohibit stopping, standing or parking, or where the curbing or street is painted yellow or red, or at any place in excess of the maximum time limited by signs;
- (16) Within twenty feet of any mail receptacle served regularly by a carrier using a motor vehicle for daily deliveries, if such parking interferes with or causes delay in the carrier's schedule;
- (17) Upon any controlled-access highway;
- (18) At any place on any street or highway where the safety and convenience of the traveling public is thereby endangered;
- (19) Over or across any lines or marks established by the Municipality to indicate parking spaces.
- (20) In front of a wheelchair accessible ramp or curb cut which is part of a sidewalk designed for use by the general public when the ramp or curb cut is properly marked with blue paint.

(b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.
(WVaC 17C-13-3)

361.04 VEHICLES PARKED ON PRIVATE PROPERTY.

No driver of a vehicle shall stop, park or leave standing unattended any vehicle on a private road or driveway or on private property without having express or implied permission from the owner, tenant or lessee of such land. The owner, tenant or lessee of such private road or driveway or private property may move, or have moved, any vehicle stopped, parked or left standing unattended on his or her private road, driveway or private property as above prohibited without any liability for the cost of moving any vehicle, nor shall he or she be liable to the owner of the vehicle for any damage done to such vehicle in moving it, unless the owner, tenant or lessee of such private road or driveway or private property was negligent in removing or authorizing the removal of the vehicle. The owner of such vehicle shall be responsible to the persons removing such vehicle for paying all removal costs. Any person who removes any vehicle under the provisions of this section shall notify the State Police of such action, and, in addition notify the Police Department.

(WVaC 17C-14-13)

361.05 MANNER OF ANGLE AND PARALLEL PARKING.

(a) Every vehicle stopped or parked upon a roadway where there is an adjacent curb shall be stopped or parked with the curb-side wheels of such vehicle parallel with and not more than eighteen inches from the curb, unless it is impossible to approach so close to the curb; in such case the stop shall be as close to the curb as possible and only for the time necessary to discharge and receive passengers or to load or unload merchandise.

(b) This subsection does not apply to streets or parts thereof where angle parking is lawfully permitted. However, no angle parking shall be permitted on a State or Federal-aid route unless approved by the State Commissioner of Highways.

(c) Upon streets where angle parking is permitted, no person shall stop, stand or park a vehicle other than at the angle to the curb or edge of the roadway as is indicated by appropriate signs or marks.

(d) No vehicle shall be stopped or parked on a road or street with the vehicle facing in a direction other than the direction of travel on that side of the road or street.

361.06 ACCESSIBLE PARKING.

(a) As used in this section, the following terms have the meanings ascribed to them in this subsection:

- (1) A person or applicant with a "mobility impairment" means a person who is a citizen of West Virginia and as determined by a physician, allopath or osteopath chiropractor, advanced nurse practitioner or physician's assistant licensed to practice in West Virginia:
 - A. Cannot walk two hundred feet without stopping to rest;
 - B. Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device or another person;
 - C. Is restricted by lung disease to such an extent that the person's force (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than sixty mm/hg on room air at rest;
 - D. Uses portable oxygen;
 - E. Has a cardiac condition to such an extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards established by the American heart association; or
 - F. Is severely limited in his or her ability to walk because of an arthritic, neurological, or other orthopedic physical condition.
- (2) "Special registration plate" means a registration plate that displays the international symbol of access, as adopted by the Rehabilitation International Organization in nineteen hundred sixty-nine at its Eleventh World Congress on Rehabilitation of the Disabled, in a color that contrasts with the background, in letters and numbers the same size as those on the plate, and which may be used in lieu of a regular registration plate;

- (3) “Removable windshield placard” (permanent or temporary) means a two-sided, hanger style placard measuring three inches by nine and one half inches, with all of the following on each side:
- A. The international symbol of access, measuring at least three inches in height, centered on the placard, in white on a blue background for permanent designations and in white on a red background for temporary designations;
 - B. An identification number measuring one inch in height;
 - C. An expiration date in numbers measuring one inch in height; and
 - D. The seal or other identifying symbol of the issuing authority.
- (4) “Public entity” means state or local government or any department, agency, special purpose district or other instrumentality of a state or local government.
- (5) “Public facility” means all or any part of any buildings, structures, sites, complexes, roads, parking lots or other real or personal property, including the site where the facility is located.
- (6) “Place(s) of public accommodation” means a facility or facilities operated by a private entity whose operations affect commerce and fall within at least one of the following categories:
- A. Inns, hotels, motels and other places of lodging;
 - B. Restaurants, bars or other establishments serving food or drink;
 - C. Motion picture houses, theaters, concert halls, stadiums or other places of exhibition or entertainment;
 - D. Auditoriums, convention centers, lecture halls or other places of public gatherings;
 - E. Bakeries, grocery stores, clothing stores, hardware stores, shopping centers or other sales or rental establishments;
 - F. Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals or other service establishments;
 - G. Terminals, depots or other stations used for public transportation;
 - H. Museums, libraries, galleries or other places of public display or collection;
 - I. Parks, zoos, amusement parks or other places of recreation;
 - J. Public or private nursery, elementary, secondary, undergraduate or post-graduate schools or other places of learning and day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies or other social service establishments; and
 - K. Gymnasiums, health spas, bowling alleys, golf courses or other places of exercise or recreation.
- (7) “Commercial facility” means a facility whose operations affect commerce and which are intended for nonresidential use by a private entity.
- (8) “Accessible parking” formerly known as “handicapped parking” is the present phrase consistent with language within the American with Disabilities Act (ADA).
- (9) “Parking enforcement personnel” includes any law enforcement officer as defined by West Virginia Code 30-29-1, and private security guards, parking personnel and other personnel authorized by a city, county or the state to issue parking citations.

(b) An accessible parking space should comply with the provisions of the Americans with Disabilities Act accessibility guidelines, contained in 28 C.F.R. 36, Appendix A, Section 4.6. In particular, the parking space should be a minimum of eight feet wide with an adjacent eight-foot access aisle for vans having side mounted hydraulic lifts or ramps or a five-foot access aisle for standard vehicles. Access aisles should be marked using diagonal two- to four-inch-wide stripes spaced every twelve or twenty-four inches apart along with the words “no parking” in painted letters which are at least twelve inches in height. All accessible parking spaces should have a signpost in front or adjacent to the accessible parking space displaying the international symbol of access sign mounted at a minimum of eight feet above the pavement or sidewalk and the top of the sign. Lines or markings on the pavement or curbs for parking spaces and access aisles may be in any color, although blue is the generally accepted color for accessible parking.

(c) A vehicle displaying a disabled veterans special registration plate issued pursuant to West Virginia Code 17A-3-14(c)(6) shall be recognized and accepted as meeting the requirements of this section.

(d) A vehicle from any other state, United States territory or foreign country displaying an officially issued special registration plate, placard or decal bearing the international symbol of access shall be recognized and accepted as meeting the requirements of this section, regardless of where the plate, placard or decal is mounted or displayed on the vehicle.

(e) Stopping, standing or parking places marked with the international symbol of access shall be designated in close proximity to all public entities including state, county and municipal buildings and facilities, places of public accommodation and commercial facilities. These parking places shall be reserved solely for persons with a mobility impairment and disabled veterans at all times.

(f) Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: Provided, that this privilege does not mean that the vehicle may park in any zone where stopping, standing or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provision of any ordinance of any political subdivision of this State is contrary to the provisions of this section, the provisions of this section take precedence and apply.

The parking privileges provided for in this subsection apply only during those times when the vehicle is being used for the loading or unloading of a person with a mobility impairment. Any person who knowingly exercises, or attempts to exercise these privileges at a time when the vehicle is not being used for the loading or unloading of a person with a mobility impairment, upon first conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined two hundred dollars (\$200.00); upon second conviction thereof, in addition to any other penalty, he or she may otherwise incur, shall be fined three hundred dollars (\$300.00); and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars (\$500.00).

(g) Any person whose vehicle does not display a valid, special registration plate or removable windshield placard may not stop, stand or park a motor vehicle in an area designated, zoned or marked for accessible parking with signs or instructions displaying the international symbol of access, either by itself or with explanatory text. The signs may be mounted on a post or a wall in front of the accessible parking space and instructions may appear on the ground or pavement, but use of both methods is preferred. Accessible parking spaces for vans having an eight-foot adjacent access aisle should be designated as “van accessible” but may be used by any vehicle displaying a valid special registration plate or removable windshield placard.

Any person who violates the provisions of this subsection shall be fined two hundred dollars (\$200.00); upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined three hundred dollars (\$300.00); and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars (\$500.00).

(h) All signs that designate areas as “accessible parking” or that display the international symbol of access shall also include the words “Up to \$500 fine”.

(i) No person may stop, stand or park a motor vehicle in an area designated or marked off as an accessible aisle to a van-accessible parking space or regular accessible parking space. Any person, including a driver of a vehicle displaying a valid removable windshield placard or special registration plate, who violates the provisions of this subsection shall be fined two hundred dollars (\$200.00); upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined three hundred dollars (\$300.00); and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars (\$500.00).

(j) Parking enforcement personnel who otherwise enforce parking violations may issue citations for violations of this section and shall reference the number on the vehicle’s license plate, since the driver normally will not be present.

(k) Law-enforcement agencies may establish a program to use trained volunteers to collect information necessary to issue citations to persons who illegally park in designated accessible parking spaces. Any law-enforcement agency choosing to establish a program shall provide for workers’ compensation and liability coverage. The volunteers shall photograph the illegally parked vehicle and complete a form, to be developed by supervising law-enforcement agencies, that includes the vehicle’s license plate number, date, time and location of the illegally parked vehicle. The photographs must show the vehicle in the accessible space and a readable view of the license plate. Within the discretion of the supervising law-enforcement agency, the volunteers may issue citations or the volunteers may submit the photographs of the illegally parked vehicle and the form to the supervising law-enforcement agency, who may issue a citation, which includes the photographs and the form, to the owner of the illegally parked vehicle. Volunteers shall be trained on the requirements for citations for vehicles parked in marked, zoned or designated accessible parking areas by the supervising law-enforcement agency.

(l) The Municipality in enforcing this section shall retain all fines and associated late fees. These revenues shall be used first to fund the provisions of subsection (k) of this section, if adopted by the Municipality or otherwise shall go into the Municipality’s General Revenue Fund. (WVaC 17C-13-6)

361.07 ABANDONED MOTOR VEHICLES.

(a) Definitions.

(1) "Abandoned motor vehicle" means any motor vehicle, or major part thereof, which is inoperative and which has been abandoned on public property for any period of time over five days, other than in an enclosed building or in a licensed salvage yard or at the business establishment of a demolisher; or any motor vehicle, or major part thereof, which has remained on private property without consent of the owner or person in control of the property for any period of time over five days; or any motor vehicle, or major part thereof, which is unattended, discarded, deserted and unlicensed and is not in an enclosed building, a licensed salvage yard or the actual possession of a demolisher: Provided, that a motor vehicle, or major part thereof, shall not be considered an abandoned motor vehicle if:

- A. The owner of the motor vehicle is storing the motor vehicle on the owner's property;
 - B. The motor vehicle is being stored for the purpose of using its parts on other motor vehicles owned by the owner;
 - C. The owner owns other motor vehicles similar to the motor vehicle being stored; and
 - D. The owner is a business licensed to do business in the State of West Virginia and not in the primary business of offering motor vehicles or parts thereof for sale.
- (2) "Enclosed building" means a structure surrounded by walls or one continuous wall and having a roof enclosing the entire structure and includes a permanent appendage thereto.
- (3) "Motor vehicle" means a vehicle which is or was self-propelled, including, but not limited to, automobiles, trucks, buses and motorcycles.
- (4) "Person" means a natural person, corporation, firm, partnership, association or society and the plural as well as the singular.
(WVaC 17-24A-1)

(b) Abandonment of Motor Vehicle Prohibited. No person shall, within this Municipality, abandon a motor vehicle or major part thereof upon the right-of-way of any public highway, upon any other public property or upon any private property without the consent of the owner or person in control of the property, or upon property owned or controlled by that person, unless it be at a licensed salvage yard or at the business establishment of a demolisher, or a business licensed to do business in the State of West Virginia and not in the primary business of offering motor vehicles or parts thereof for sale.
(WVaC 17-24A-2)

361.075 JUNK VEHICLES ON PRIVATE PROPERTY.

(a) Definitions. The following definitions shall apply in this section:

"Vehicle" means a machine propelled by power other than human power designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery and shall include, without limitation, automobile, truck, trailer, motorcycle, tractor, buggy and wagon.

"Street" or "highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

"Property" means any real property within the City which is not a street or highway.

"Inoperable motor vehicle" means any motor vehicle from which, for a period of at least sixty days, the engine, wheels or other parts have been removed, or on which the engine, wheels or other parts have been altered, damaged or otherwise so treated that the vehicle is incapable of being driven under its own motor power. Inoperable motor vehicle shall not include a motor vehicle which has been rendered temporarily incapable of being driven under its own power in order to perform ordinary service or repair operations nor to any motor vehicles that are kept within a building when not in use, to historic vehicles over twenty-five years of age, or to a motor vehicle on the premises of a place of business engaged in wrecking or junking of motor vehicles.

"Abandoned vehicle" means any vehicle which is left at any place for such time and under such circumstances as to cause such vehicle reasonably to appear to have been abandoned.

(b) Abandonment of Vehicles. No person shall abandon any vehicle within the City and no person shall leave any vehicle at any place within the City of such time and under such circumstances as to cause such vehicle reasonably to appear to have been abandoned.

(c) Nuisance. Inoperable motor vehicles, whether on public or private property, are hereby declared to be a nuisance.

All persons are required to dispose of any inoperable motor vehicle under their control upon written notice received from Council or from the Chief of Police or any member of his department designated by him commanding such disposition of the inoperable motor vehicle. Such notice shall direct the owner, occupant or person causing, permitting or maintaining such nuisance to abate or remove such nuisance within seven days and shall state that unless such nuisance is so abated, the City will cause the same to be abated and will charge the costs thereof to the owner, occupant or person causing, permitting or maintaining the same, as the case may be.

If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the Mayor, Chief of Police or Code Enforcement Officer shall cause the abatement or removal of the public nuisance and charge the costs thereof to the owner, occupant or person causing, permitting or maintaining the same.

(d) Impounding. The Chief of Police or any member of his department designated by him is hereby authorized to remove or have removed any vehicle left at any place within the City which reasonably appears to be in violation of this section or which reasonably appears to be lost, stolen or unclaimed, or which is an inoperable vehicle. Such vehicle shall be impounded until lawfully claimed or disposed of.

(e) Penalty. Any person who willfully violates this section by refusing to abate a nuisance by failing to dispose of any inoperable motor vehicle under his control after receipt of written notice as hereinabove set forth shall be fined as provided in Section 303.99. (Ord. 5-12-81.)

361.08 PARKING FOR CERTAIN PURPOSES PROHIBITED.

No person shall park any vehicle upon any street within the Municipality for the principal purpose of:

- (a) Displaying such vehicle for sale.
- (b) Displaying advertising.
- (c) Washing, greasing or repairing such vehicle, except repairs made necessary by an emergency.
- (d) Relieving the crowded condition of any parking lot, used car lot, automobile sales lot, repair garage, automobile sales agency or used car sales agency.

361.09  have no application.
(WVaC 17C-11-2)

373.03 RIDING UPON SEATS; NUMBER OF PERSONS.

(a) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

(b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped. (WVaC 17C-11-3)

373.04 ATTACHING BICYCLE OR SLED TO VEHICLE.

No person riding upon any bicycle, coaster, skateboard, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway.
(WVaC 17C-11-4)

373.05 RIDING ON ROADWAYS AND BICYCLE PATHS.

(a) Any person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride in the lane marked for bicycle use or, if no lane is marked for bicycle use, as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

- (1) When overtaking and passing another bicycle or vehicle proceeding in the same direction;
- (2) When preparing for a left turn at an intersection or into a private road or driveway; or
- (3) When reasonably necessary to avoid any condition or potential conflict including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane. For the purposes of this subsection, a "substandard-width lane" is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(b) Any person operating a bicycle upon a one-way roadway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.

(c) Persons riding bicycles upon a roadway may not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.
(WVaC 17C-11-5)

373.06 CARRYING ARTICLES.

No person operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping at least one hand upon the handlebars.
(WVaC 17C-11-6)

373.07 LIGHTS AND REFLECTOR ON BICYCLE; BRAKES.

(a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front and with a red reflector on the rear of a type approved by the Department of Motor Vehicles which shall be visible from all distances from fifty feet to 300 feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to the red reflector.

(b) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.
(WVaC 17C-11-7)

373.08 RECKLESS OPERATION; CONTROL, COURSE AND SPEED.

No person shall operate a bicycle:

- (a) Without due regard for the safety and rights of pedestrians and drivers and occupants of all other vehicles, and so as to endanger the life, limb or property of any person while in the lawful use of the streets or sidewalks or any other public or private property;
- (b) Without exercising reasonable and ordinary control over such bicycle;
- (c) In a weaving or zigzag course unless such irregular course is necessary for safe operation in compliance with law;
- (d) Without both hands upon the handle grips except when necessary to give the required hand and arm signals, or as provided in Section 373.06;
- (e) At a speed greater than is reasonable and prudent under the conditions then existing.

373.09 BICYCLE HELMETS FOR CHILDREN.

(a) Definitions. As used in this section:

- (1) "Bicycle" means a human-powered vehicle with wheels designed to transport, by the action of pedaling, one or more persons seated on one or more saddle seats on its frame. Such term also includes a human-powered vehicle, and any attachment to such vehicle designed to transport by pedaling when the vehicle is used on a public roadway, public bicycle path or other public right-of-way, but does not include a tricycle.
- (2) "Tricycle" means a three-wheeled human-powered vehicle designed for use as a toy by a single child under the age of six years, the seat of which is no more than two feet from ground level.
- (3) "Public roadway" means a right of way under the jurisdiction and control of this State or the Municipality for use primarily by motor vehicles.
- (4) "Public bicycle path" means a right of way under the jurisdiction and control of this State or the Municipality for use primarily by bicycles and pedestrians.
- (5) "Other public right-of-way" means any right of way other than a public roadway or public bicycle path that is under the jurisdiction and control of this State or the Municipality and is designed for use and used by vehicular or pedestrian traffic.
- (6) "Protective bicycle helmet" means a piece of headgear which meets or exceeds the impact standards for protective bicycle helmets set by the American National Standards Institute (ANSI) or the Snell Memorial Foundation's standards for protective headgear or American Society for Testing and Materials (ASTM) for use in bicycling.
- (7) "Passenger" means any person who travels on a bicycle in any manner except as an operator.
- (8) "Operator" means a person who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.
(WVaC 17-11A-3)

(b) Requirements for Helmet Use.

- (1) It is unlawful for any person under fifteen years of age to operate or be a passenger on a bicycle or any attachment to a bicycle used on a public roadway, public bicycle path or other public right of way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.
- (2) It is unlawful for any parent or legal guardian of a person under fifteen years of age to knowingly permit such person to operate or be a passenger on a bicycle or on any attachment to a bicycle used on a public roadway, public bicycle path or other public right of way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.
(WVaC 17C-11A-4)

(c) Sale of Bicycle Helmets. Any helmet sold or offered for sale for use by operators and passengers of bicycles shall be conspicuously labeled in accordance with the standard described in subsection (a)(6) hereof, which shall constitute the manufacturer's certification that the helmet conforms to the applicable safety standards. (WVaC 17C-11A-5)

(d) Civil Actions. A violation of subsection (b) hereof is not admissible as evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages, and shall not be admissible in mitigation of damages.
(WVaC 17C-11A-6)

373.10 RIDING UPON SIDEWALKS.

No person sixteen years of age or more shall ride any bicycle upon any sidewalk within the City. Persons under sixteen years of age riding a bicycle upon the sidewalk shall yield the right of way to any pedestrian and shall give audible signal before overtaking a pedestrian.

373.11 ELECTRIC BICYCLES.

(a) The operator of an electric bicycle has all of the rights and privileges and is subject to all of the duties applicable to the driver of a vehicle subject to this chapter, except as otherwise provided by this section and except as to those provisions of this chapter which by their nature can have no application.

(b) A person owning or operating an electric bicycle is not subject to the provisions of West Virginia Code 17A-1-1 et seq., 17B-1-1 et seq., or 17D-1-1 et seq., relating to registration, title, driver's license, and financial responsibility requirements.

(c) A person may not tamper with or modify an electric bicycle so as to change the motor-powered speed capability or motor engagement between pedal-assist and throttle-assist types of engagement. If a motor on an electric bicycle is modified so that a limit established in Section 301.083 is exceeded, that vehicle is no longer an electric bicycle. The provisions of this subsection are not applicable to a modified electric bicycle operated solely and exclusively on a person's own property.

(d) An electric bicycle must comply with the equipment and manufacturing requirements for bicycles adopted by the United States Consumer Product Safety Commission (16 C.F.R. Part 1512).

(e) The motor on an electric bicycle must disengage or cease to propel the electric bicycle when the operator stops pedaling, or when the operator applies the brakes and stops pedaling.

(f) A Class 3 electric bicycle must be equipped with a speedometer that displays the speed the electric bicycle is traveling in miles per hour.

(g) Electric bicycles operated on public roadways, public bicycle paths, public multiuse paths, and other public rights-of-way where bicycles are permitted to travel are subject to the following restrictions:

- (1) A Class 1 electric bicycle may be used in places where bicycles are permitted to travel, including, but not limited to, public roadways, public bicycle paths, public multiuse trails, and public single-use trails.
- (2) A Class 3 electric bicycle may not be operated on a bicycle path, multiuse trail, or single-use trail unless it is within a highway or roadway: provided, that the provisions of this subdivision are not applicable to a bicycle path, multiuse trail, or single-use trail if the municipality, local authority, or governing body of a state agency that has jurisdiction over the bicycle path, multiuse trail, or single-use trail expressly permits that operation.
- (3) This subsection may not be construed to limit the authority of the owner of a private way or the owner of private property to restrict or allow the operation of electric bicycles on the way or property.

(h) Age restrictions related to the operation of electric bicycles are as follows:

- (1) A person under sixteen years of age may not operate a Class 3 electric bicycle;
- (2) A person under fifteen years of age may only be a passenger on a Class 3 electric bicycle, including as a passenger within any attachment to the vehicle designed to transport an additional person, including a child, provided the operator of the electric bicycle is eighteen years of age or older; and
- (3) A person under fifteen years of age who is an operator or passenger on an electric bicycle shall wear a properly fitted and fastened bicycle helmet, pursuant to Section 373.09.

(i) A person under the influence of alcohol or controlled substances shall not operator a Class 1 or Class 3 electric bicycle. (WVaC 17C-11-8)

373.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty.)

- (a) Notwithstanding the provisions of Section 303.99, any parent or legal guardian violating any requirement set forth in Section 373.09(b) shall be fined ten dollars (\$10.00) or be required to perform two hours in community service related to a child injury prevention program which includes injury prevention education or both fined and required to perform such community service. Notwithstanding the provisions of West Virginia Code 8-11-1, no court costs may be assessed to any person violating the requirements of Section 373.09(b).

- (b) In the case of a first violation of Section 373.09(b), the court may waive the fine upon receipt of satisfactory proof that the person has a helmet or within a reasonable time from the date of the violation, purchased or otherwise obtained, a protective bicycle helmet.
- (c) It is an absolute defense to a charge for a violation of Section 373.09 that a parent or legal guardian is unable to pay for the protective bicycle helmet. Inability to pay may be demonstrated by the filing of a financial affidavit in accordance with the provisions of West Virginia Code 59-2-1(c). Any person who demonstrates inability to pay shall be referred to the Governor's highway safety program for assistance in obtaining the appropriate helmet or helmets.
(WVaC 17C-11A-7)

