

CODIFIED ORDINANCES OF BENWOOD
PART SEVEN - BUSINESS AND TAXATION CODE

- Art. 705. Administration and Enforcement.**
- Art. 709. License Taxes.**
- Art. 713. Business and Occupation Tax.**
- Art. 719. Public Utility Tax.**
- Art. 725. Intoxicating Liquor Tax.**
- Art. 731. Municipal Service Fees.**
- Art. 735. Solicitation of Funds.**
- Art. 739. Wine Dealers.**
- Art. 743. Fire Service Fee.**
- Art. 747. New Industry Tax Incentive. (Repealed)**

CODIFIED ORDINANCES OF BENWOOD
PART SEVEN - BUSINESS AND TAXATION CODE

ARTICLE 705
Administration and Enforcement

705.01	Definition.	705.19	Term.
705.02	Clerk-Treasurer to issue license, permits.	705.20	Late fee.
705.03	Applications.	705.21	Renewals.
705.04	Licenses required.	705.22	Assignment or transfer; fees.
705.05	Periods for which fees fixed.	705.23	Separate licenses or permits for each activity.
705.06	Authority to administer oaths.	705.24	Effect of State license or permit.
705.07	Certifications by City officials; forms; filing.	705.25	Rights under licenses or permits; evading provisions.
705.08	Findings by certifying officials.	705.26	Carrying or displaying; expiration or revocation.
705.09	Form of certificates and stubs.	705.27	Adjustments of disputes and minor details.
705.10	Contents of certificates and stubs.	705.28	Revocation, suspension and alteration.
705.11	Certificate fee.	705.29	Evidence of liability for payment of fees.
705.12	Issuance of certificates; stamping or endorsing.	705.30	License Exemption Board; exemptions.
705.13	Duplicate certificates upon loss of original; fee.	705.31	Specific exemptions.
705.14	Bonds of applicants.	705.32	Conflict.
705.15	Bond amount.	705.99	Penalty.
705.16	Bond conditions; requiring corporate sureties.		
705.17	Insurance in lieu of bond.		
705.18	Obtaining license or permit by misrepresentation.		

CROSS REFERENCES
Taxation generally - see W. Va. Code Art. 8-13

705.01 DEFINITION.

Unless a different intent is apparent from the context, the word “person”, as used in this Business and Taxation Code shall be construed to include a natural person, a firm, copartnership, association, organization, corporation or any combination of persons or others acting as a unit.

705.02 CLERK-TREASURER TO ISSUE LICENSES, PERMITS.

The City Clerk-Treasurer shall issue all licenses required by this Business and Taxation Code; and except where provided to the contrary, shall issue all permits required by this Business and Taxation Code or other ordinances of the City.

705.03 APPLICATIONS.

Any person who desires a City license or permit, except as otherwise provided, shall apply for the same to the Clerk-Treasurer and may be required to state under oath or affirmation such facts as may be applicable to the requirements of the license or permit applied for.

705.04 LICENSES REQUIRED.

All persons engaged in the trades, business, professions, occupations, activities and privileges contained in this Business and Taxation Code shall be licensed in accord with the provisions of this Code. No person shall carry on any activity hereinafter mentioned in this Code upon which a fee is imposed without payment of such license fee. The payment in full of the proper fee, the issuance of a license certificate under the provisions of this Code and the fulfillment of all terms and conditions of such grant shall be conditions precedent to the carrying on of any activity for which a license is required by this Code.

705.05 PERIODS FOR WHICH FEES FIXED.

Except as may be provided to the contrary, each license issued, under the provisions of this Business and Taxation Code, prior to the first day of January of any year shall be charged for at the full rate, and each license issued on or after the first day of January shall be charged at one-half of the full rate as prescribed in respective sections of this Code.

705.06 AUTHORITY TO ADMINISTER OATHS.

The Clerk-Treasurer and regulating officers and their deputies shall have authority to administer oaths and affirmations hereunder.

705.07 CERTIFICATIONS BY CITY OFFICIALS; FORMS; FILING.

If any license or permit requires the certification of some other official before the issuance thereof, the Clerk-Treasurer shall provide the applicant with a form on which to obtain such certificate, and such form, when returned to the Clerk-Treasurer with the required certification shall be filed by the Clerk-Treasurer.

705.08 FINDINGS BY CERTIFYING OFFICIALS.

(a) Health Officer. In all cases wherein the certification of the Health Officer is required prior to the issuance of a license or permit, such certification shall be based on a finding of fact that the applicant and the premises to which the application relates, comply with all health and sanitary requirements of the ordinances of the City and the statutes of the State.

(b) Fire Chief. In all cases where the certification of the Fire Chief is required prior to the issuance of a license or permit, such certification shall be based on a finding of fact that the premises to which the application relates comply with all fire protection requirements of the ordinances of the City and the statutes of the State.

(c) City Engineer. In all cases where the certification of the City Engineer is required prior to the issuance of a license or permit such certification shall be based on a finding of fact that the premises, machinery, appliances, equipment, contrivance or device to which the application relates complies with all structural requirements of the ordinances of the City and the statutes of the State, or that such equipment, contrivances or device is safe for the purposes intended, and the City Engineer may delegate authority to certify hereunder to the Building Inspector, Plumbing Inspector, Electrical Inspector, Office Engineer or to any technician in the Public Works Department.

(d) Chief of Police. In all cases where the prior certification of the Chief of Police is required prior to the issuance of a license or permit, such certification shall be based on a finding of fact that the applicant has no police record involving moral turpitude and is not under suspicion of any offense involving moral turpitude, or that the issuance of such license or permit would not prevent proper control of traffic on City streets, depending on the purposes of the application.

705.09 FORM OF CERTIFICATES AND STUBS.

License certificates, and the stubs or other means for preserving a complete record of all matters relating thereto, shall be in such form as the Clerk-Treasurer shall prescribe. Permit certificates and the stubs or other means for preserving a complete record of all matters relating thereof, shall be in such form as may be prescribed by the appropriate regulatory officers with the approval of the Clerk-Treasurer.

705.10 CONTENTS OF CERTIFICATES AND STUBS.

Each certificate and the stub or other record thereof shall set forth the following items:

- (a) Date issued;
- (b) To whom issued;
- (c) Purpose and authority granted;
- (d) Premises or places to which applicable;
- (e) Certificate number;
- (f) Date of expiration or permit for which license or permit is valid;
- (g) Amount paid therefor;
- (h) Amount of bond posted, if any;
- (i) Place for Clerk-Treasurer to stamp "paid"; and
- (j) Signature of issuing officer.

705.11 CERTIFICATE FEE.

For each license or permit issued, but not for certificates granting free permits or free licenses, the Clerk-Treasurer shall charge a certificate fee of fifty cents (50¢).

705.12 ISSUANCE OF CERTIFICATES; STAMPING OR ENDORSING.

When proper application has been made, when any required certification has been filed, and when any required bond has been posted, the Clerk-Treasurer shall issue to the applicant a license or permit certificate, and shall preserve a record thereof in his own files. Such certificate shall not be valid unless it shows that the certificate fee has been paid, except that in cases wherein no payment is required or wherein payment is due at some other time the Clerk-Treasurer shall so endorse in the place provided for such stamp and the certificate shall then be valid.

705.13 DUPLICATE CERTIFICATES UPON LOSS OF ORIGINAL; FEE.

Any licensee or permittee who makes oath before the issuing officer that he has lost his license or permit certificate, or that such certificate has been destroyed or mutilated, shall be issued a duplicate of such certificate, plainly marked as such, upon payment of a certificate fee of one dollar (\$1.00) if then otherwise entitled to such certificate.

705.14 BOND OF APPLICANTS.

Where the provision of this Business and Taxation Code or other ordinances of the City require that the applicant for any license or permit post bond, such bond shall be furnished to the Clerk-Treasurer.

705.15 BOND AMOUNT.

Such bond shall be in the amount specified for the purpose by this Business and Taxation Code or other ordinances of the City, or if no amount be specified, then in such amount as shall be deemed sufficient by the officer whose certification is required, or the Clerk-Treasurer as the case may be.

705.16 BOND, CONDITIONS; REQUIRING CORPORATE SURETIES.

Such bonds shall be payable to the City for the use and benefit of persons intended to be protected thereby and, unless otherwise provided, shall be conditioned on the payment of any damage to public or private property and the payment for any personal injuries or damages or losses resulting from any malfeasance, misfeasance or nonfeasance or negligence in connection with any of the activities or conditions for which the license or permit applied for is granted. The Clerk-Treasurer or other proper officer concerned may require corporate sureties on such bonds.

705.17 INSURANCE IN LIEU OF BOND.

In lieu of such bond an applicant may furnish one or more policies of insurance in the same amount and providing the same protection and such bonds and insurance policies shall be approved as to substance by the officer whose certification is required or by the Clerk-Treasurer as the case may be and as to form and legality by the City Attorney.

705.18 OBTAINING LICENSE OR PERMIT BY MISREPRESENTATION.

No person knowingly shall make a false statement to any officer of the City for the purpose of obtaining a license or permit under this Business and Taxation Code, or for the purpose of assisting another to obtain a license or permit under this Code or for any person to procure or attempt to procure, or to assist or attempt to assist another in procuring a license or permit under this Code by means of deceit, willful misrepresentation or willful concealment of a material fact. If any license or permit has been issued under such conditions, it shall become null and void and no refund shall be made.

705.19 TERM.

All licenses required by this Business and Taxation Code or other ordinances of the City, except as may be provided to the contrary, and all annual permits required or authorized by this Code or other ordinances of the City except as may be provided to the contrary, shall run from the first day of July and shall expire on the next succeeding thirtieth day of June, unless sooner revoked or suspended. In the event any business, activity, trade or employment is begun after the first day of July of any year a license effective until the thirtieth day of the following June shall be issued.

705.20 LATE FEE.

If any person shall conduct any activity or exercise any privilege for which the payment of a license or permit fee or tax is required by this Business and Taxation Code or other ordinances of the City, without first paying such fee or tax, he shall, in addition to paying the fee or tax required for such activity or privilege, pay a late fee of ten percent (10%) of the regular fee for each month or fraction of a month that he has been in default. Such late fee shall be deemed a license fee, and shall be assessed and collected in the manner provided in this Code except that the certificate shall state separately thereon the amount paid as a regular fee and the amount paid as a late fee.

705.21 RENEWALS.

Unless otherwise provided in this Business and Taxation Code an application for renewal of a license or permit shall be considered in the same manner as an original application.

705.22 ASSIGNMENT OR TRANSFER; FEES.

Any person holding a license or permit may, except as otherwise provided in this Business and Taxation Code or other ordinances of the City apply to the issuing authority to have such license or permit assigned to another person or transferred to another premises for the unexpired term thereof; provided, however, that no assignment or transfer shall be made of any license or permit which is personal in its nature, as for example, a food handler's license or permit, nor shall any transfer to another premises be made without prior certification by any officer whose certification was required in the first instance.

For each such assignment or transfer a certificate fee shall be charged, and in addition thereto, a certification fee of one dollar (\$1.00) shall be charged for each new certification required. No license or permit which has been suspended or revoked shall be assignable or transferable. On each assignment or transfer, a new certificate shall be issued and the old certificate shall be filed with its original record.

705.23 SEPARATE LICENSES OR PERMITS FOR EACH ACTIVITY.

The granting of a license or permit to any person to carry on an activity or exercise a privilege which contains within itself or is composed of, activities or privileges which are required by this Business and Taxation Code or other ordinances of the City to be licensed, shall not relieve the person to whom such license or permit is granted from the necessity of procuring separate licenses or permits for each activity or privilege except as may otherwise be provided in this Business and Taxation Code or other ordinances of the City.

705.24 EFFECT OF STATE LICENSE OR PERMIT.

Unless otherwise provided by statute, no State license or permit shall exempt any person from the license or permit requirements of this Business and Taxation Code or other ordinances of the City, nor shall the issuance of any State license or permit be deemed to compel the City to issue a similar license or permit contrary to the provisions of this Code or other ordinances of the City.

705.25 RIGHTS UNDER LICENSES OR PERMITS; EVADING PROVISIONS.

Any license or permit issued by the City shall be valid only for the licensee named therein, for the purpose therein specified at the location or premises therein specified, and for the period of time therein specified. Nothing in this Business and Taxation Code shall be construed to authorize anything which is prohibited by law. No person shall apply for, or cause to be applied for, or use or cause to be used a license or permit in the name of any agent, employee, officer or other person in order to avoid any provision of this Code or other ordinances of the City, or resort to any subterfuge for the purpose of evading any of its provisions.

705.26 CARRYING OR DISPLAYING; EXPIRATION OR REVOCATION.

No person shall fail to carry on his person any license or permit issued under this Business and Taxation Code at all times when engaged in the activity or while exercising the privilege granted by such license or permit; provided however, that where such activity is to be carried on, or such privilege is to be exercised, at a fixed place or location, the license or permit shall be displayed prominently in some conspicuous place at such location at all times. A licensee shall produce his license or permit when applying for a renewal thereof and when requested to do so by any public officer. No person shall use or display an expired, revoked or suspended license or permit, or a license or permit for which a duplicate has been issued.

705.27 ADJUSTMENTS OF DISPUTES AND MINOR DETAILS.

The Clerk-Treasurer with the consent of the Mayor, shall have authority to adjust with fairness to all concerned, all bona fide matters of controversy between licensees or applicants for licenses and permits and the City, and to adjust all matters of minor detail which may from time to time arise. Nothing in this section shall be construed as authority to sanction intentional violations of this Business and Taxation Code or other ordinances of the City, or to waive any required license or permit.

705.28 REVOCATION, SUSPENSION AND ALTERATION.

Any license or permit issued by the City may be revoked, suspended or altered for causes, by Council or the Mayor, and upon such revocation, suspension or alteration the City shall not be required to make any refund whatever. Licenses and permits revoked, suspended or altered by the Mayor shall be reviewable by Council if the person affected thereby applies to the Clerk-Treasurer in writing for a hearing within thirty days after notice given of the act complained of. The action of Council shall be final. The term "cause" shall include the doing or omitting of any act, or permitting any condition to exist, in connection with any activity or privilege for which a license or permit is granted, or any facilities used in connection therewith, which act omission or condition is:

- (a) Contrary to the health, morals, safety or welfare of the public;
- (b) Unlawful, irregular or fraudulent in nature;
- (c) Unauthorized or beyond the scope of the license or permit granted; or
- (d) Contrary to any provision of this Business and Taxation Code or other ordinances of the City, or of any lawful and duly promulgated rule or regulation of any City officer applicable to the subject matter for which the license or permit has been granted.

705.29 EVIDENCE OF LIABILITY FOR PAYMENT OF FEES.

In the trial of any action relating to the provisions of this Business and Taxation Code, the fact that any party to such action represented himself as engaged in any activity or occupation for the transaction of which a license or permit is required, or that such party exhibited a sign or advertisement indicating such activity or occupation, shall be evidence of the liability of such party to pay the fee for such license or permit.

705.30 LICENSE EXEMPTION BOARD; EXEMPTIONS.

A License Exemption Board is created consisting of the Mayor, the Chairman of the Council's Finance and Taxation Committee, and the City Attorney. Such Board shall have the power to grant an exemption from, or reduction in, any license or permit fee under this Business and Taxation Code to any blind or crippled person, or to any veteran of an American war, or to any charitable, religious, civic, political, benevolent or patriotic organization deemed by such Board to merit exemption. No such exemption or reduction shall, however, be granted for a period longer than the current license year, and such licensee shall be given a certificate with the exemption or reduction clearly marked thereon, and the reason therefor. Each exemption or reduction granted under the provisions hereof shall be reported to Council at its next meeting and Council may affirm, qualify or reject any such exemption or reduction. The action of Council shall be final. No license, permit or fee shall be required by any person exempted from Municipal licenses by Federal or State law.

705.31 SPECIFIC EXEMPTIONS.

Nothing in this Business and Taxation Code shall be construed to:

- (a) Require a license or impose a fee to keep a boarding house or boarding school, where boarders are not received for less than three days; or
- (b) Require any person to obtain a license or pay a fee to exhibit any work or production of his own invention or skill; or
- (c) Require a license or impose a fee for any school, religious or handicraft exhibition, literary or scientific lecture, or musical concert; or
- (d) Require any person to obtain a license or pay a fee to exhibit any goods or wares at any public dinner, fair, festival or celebration if such refreshments, goods or wares are to be furnished or sold by a religious, educational, civic, benevolent, charitable or patriotic organization not organized for profit; or
- (e) Require any trustee selling trust property, or any personal representative, or committees selling property belonging to the estate under his charge, or any officer or commissioner of any court selling property under court order, decree or other process to obtain a license or pay a fee therefor.

705.32 CONFLICT.

The provisions of this article shall apply to the issuance of all licenses and permits under Part Seven - Business and Taxation Code except as otherwise specifically provided therein.

705.99 PENALTY.

No person shall violate any provision of this Business and Taxation Code or do any act prohibited by this Code or aid to conspire with another to violate any provision of this Code or resort to subterfuge for the purpose of evading any provision of this Code. Whoever violates any provision of this Part Seven - Business and Taxation Code, where no other penalty is provided, shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.

**ARTICLE 709
License Taxes**

<p>709.01 License required. 709.02 License fees. 709.03 Head tax on dogs.</p>	<p>709.04 Delinquency in payment of utility bills or taxes; business license not awarded or renewed. 709.99 Penalty.</p>
--	---

CROSS REFERENCES

Authority to tax - see W. Va. Code 8-13-4, 11-12-4
 Domestic animal tax - see W. Va. Code 8-13-10
 Administration and enforcement - see BUS. & TAX. Art. 705

709.01 LICENSE REQUIRED.

- (a) No person or business shall transact or conduct business in the City unless they obtain a license from the Clerk-Treasurer of the City.
- (b) Any person or business desiring to transact or do business in the City shall file a written application for a license with the Clerk-Treasurer.
- (c) Upon the receipt of any application pursuant to the provisions of this section, the Clerk-Treasurer shall present the same to Council at the next regular meeting thereof, for its consideration. If the application is approved by a majority of Council, the Clerk-Treasurer shall issue a permit to the applicant upon payment of the license fee.
- (d) Each license shall be for a period of one fiscal year from July 1 to June 30. (Ord. 6-8-82.)

709.02 LICENSE FEES.

The license fee schedule to transact or do business in the City shall be as set forth:

<u>Alcoholic beverages/alcoholic liquors</u>	
Fraternal or veterans organizations	\$250.00
Private club - less than 1,000 members	250.00
more than 1,000 members	625.00

Nonintoxicating beer

Class A - Retail dealer	75.00
(restaurants, bars and fraternal organizations)	75.00
Class B - Grocery stores (chilled and unchilled)	75.00
Beer distributor	500.00
Wine - retailers (grocer)	75.00
distributors (wholesale)	1,250.00

Liquor sales

Class A license	750.00
(more than one store in State)	
Class B license	250.00
(one store)	

Each applicant is required to submit a copy of their WV ABCC license.

Amusement, Gaming or Music Devices

20 or less machines on the premises:

\$0.05 device	5.00/each
0.10 device	10.00/each
0.10 plus device	12.50/each

More than 20 machines on the premises:

\$0.05 device	\$75.00/each
0.10 device	112.00/each
0.10 plus device	150.00/each

Architect	25.00
Attorney	5.00
Auctioneer	15.00
Bagatelle table (first)	12.50
each additional	6.25
Barbers, beauticians and manicurists	25.00
Billiard or pool (first)	25.00
each additional	12.50
Carnivals (street or other)	
each performance, exhibit or entertainment	5.00 per week
riding devices	10.00 per week per device
concessions, services, goods, wares, merchandise and food	5.00 per week per concession
games of skill	10.00 per week per concession
candy or merchandise wheels	25.00 per day
Chiropractors	25.00
Collection agency	50.00
Contractors resident	25.00
nonresident	50.00

Medical corporation	\$150.00
Engineer	25.00
General stores	
General store shall be construed to mean and include any store or stores or any mercantile establishment or establishments, in which goods, wares or merchandise of any kind is purchased, ordered, sold or offered for sale either at retail or wholesale.	
1 to 5 stores	15.00 each
Special stores	
Same as general, except these establishments do not sell cigarettes, tobacco products, soft drinks or coin operated device(s).	
1 to 5 stores	5.00 each
Hawker and Peddler	
On foot	10.00
Vehicle not exceeding ½ ton	15.00
Vehicle not exceeding 1 ton	50.00
Vehicle not exceeding 2 tons	100.00
More than 2 tons	150.00 plus
(\$100.00 for each additional ton or fraction thereof)	
Itinerant vendors	250.00
Junk vendors	
Resident within City limits	25.00
Resident junk dealer (no yard for storing)	25.00
Resident junk dealer agent	10.00
Itinerant junk collector	2.00
Nonresident junk dealer	75.00
Nonresident junk dealer agent	75.00
Osteopathic physicians and surgeons	10.00
Physicians, surgeons and podiatrists	25.00
Private detectives, investigators, private security/ patrol guards	50.00
Restaurants	2.00
\$2.00 plus \$5.00 for each five chairs or spaces where persons are fed in excess of ten.	

Vending machines, merchandise or service devices

Less than 20:	
5 device	5.00 each
10 device	10.00 each
10 plus device	12.50 each
More than 20:	
5 device	50.00 each
10 device	75.00 each
10 plus device	125.00 each

All others not listed: The City reserves the right to set appropriate fees.
(Ord. 7-23-96.)

709.03 HEAD TAX ON DOGS.

The head tax on each dog owned by a resident of the City shall be six dollars (\$6.00) per dog which sum is to be levied and collected by the County Assessor in accordance with West Virginia Code 19-20-2.

**709.04 DELINQUENCY IN PAYMENT OF UTILITY BILLS OR TAXES;
BUSINESS LICENSE NOT AWARDED OR RENEWED.**

No business license shall be awarded or renewed for any person or business delinquent in its water, sewage or garbage bills or in the payment of its Business and Occupation Taxes. However, should said person or business enter into or have previously entered into a payment plan with the City to resolve the delinquency, a license shall be issued or renewed.
(Ord. 10-12-04.)

709.99 PENALTY.

Any person or business who transacts or does business in the City in violation of this article shall be fined not more than five hundred dollars (\$500.00).
(Ord. 6-8-82.)

ARTICLE 713
Business and Occupation Tax

<p>713.01 Definitions.</p> <p>713.02 Imposition of privilege tax.</p> <p>713.03 Production of coal and other natural resources products.</p> <p>713.04 Manufactured or compound products.</p> <p>713.05 Business of selling tangible property; sales exempt.</p> <p>713.06 Public service or utility business.</p> <p>713.07 Business of contracting.</p> <p>713.08 Banking and other financial institutions.</p> <p>713.09 Business of operating amusements.</p> <p>713.10 Service business or calling not otherwise specifically taxed.</p> <p>713.11 Business of collecting rentals, royalties, etc.</p> <p>713.12 Exemptions; nonexempt business.</p> <p>713.13 Computation of tax; payment.</p> <p>713.14 Return and remittance by taxpayer.</p> <p>713.15 Alternate return and remittance by taxpayer.</p>	<p>713.16 Erroneous computation.</p> <p>713.17 Failure to make return.</p> <p>713.18 Appeal correction of assessment; injunction.</p> <p>713.19 Tax year.</p> <p>713.20 Tax cumulative.</p> <p>713.21 Payment.</p> <p>713.22 Payment by nonresident contractors.</p> <p>713.23 Lien of tax due and unpaid.</p> <p>713.24 Collecting by suit; payment by receiver.</p> <p>713.25 Tax lien upon property of person selling out or quitting business.</p> <p>713.26 Priority in distribution in receivership, etc., personal liability of administrator.</p> <p>713.27 Certificate to clerk of county court of assessment of taxes.</p> <p>713.28 Collection by distraint; other remedies; report of collection.</p> <p>713.29 Administration of Article.</p> <p>713.30 Reports.</p> <p>713.99 Penalty.</p>
---	--

CROSS REFERENCES

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

Collection of taxes - see W. Va. Code 8-13-15 et seq.

713.01 DEFINITIONS.

When used in this article:

- (a) "Person" or "company" herein used interchangeably, includes any individual, firm, copartnership, joint venture, association, corporation, trust or any other group or combination acting as a unit and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.
- (b) "Tax year" or "taxable year" means either the calendar year or the taxpayer's fiscal year when permission is obtained from the Clerk-Treasurer of the City to use the same as the tax period in lieu of the calendar year.
- (c) "Sale", "sales" or "selling" includes any transfer of the ownership of, or title to, property whether for money or in exchange for other property.
- (d) "Taxpayer" means any person liable for any tax hereunder.
- (e) "Gross income" means the gross receipts of the taxpayer received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce, or sales and the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees or other emoluments however designed and without any deduction on account of the cost of property sold, the costs of materials used, labor costs, taxes, royalties, interest or discount paid or any other expenses whatsoever.
- (f) "Gross proceeds of sales" means the value, whether in money or other property, actually proceeding from the sale of tangible property without any deduction on account of the cost of the property sold or expenses of any kind.
"Gross income" and "gross proceeds of sales" shall not be construed to include:
 - (1) Cash discounts allowed and taken on sales;
 - (2) The proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit;
 - (3) The amount allowed as "trade-in-value" for any article accepted as part payment for any article sold; or
 - (4) Excise taxes imposed by this State.
- (g) "Business" includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. "Business" does not include a casual sale by a person who is not engaged in the business of selling the type of property involved in such casual sale. "Business" includes the production of natural resources or manufactured products which are used or consumed by the producer or manufacturer.
- (h) "Service business or calling" includes all activities engaged in for other persons for a consideration, which involves the rendering of a service as distinguished from the sale of tangible property, but does not include the services rendered by an employee to his employer. This term includes persons engaged in manufacturing, compounding or preparing for sale, profit or commercial use, articles, substances, or commodities which are owned by another or others, as well as persons engaged as independent contractors in producing natural resource products for persons required to pay the tax imposed by this article.

- (i) “Selling at wholesale” or “wholesale sales” means:
 - (1) Sales of any tangible personal property for the purpose of resale in the form of tangible personal property;
 - (2) Sales of machinery, supplies or materials which are to be directly consumed or used by the purchaser in the conduct of any business or activity which is subject to the tax imposed by this article.
 - (3) Sales of any tangible personal property to the United States of America, its agencies and instrumentalities or to the State, its institutions or political subdivisions.
- (j) “Contracting” includes the furnishing of work, or both materials and work, in the fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof or for the alteration, improvement or development of real property.
(Ord. 6-28-77.)

713.02 IMPOSITION OF PRIVILEGE TAX.

There is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in Section 713.03 to 713.11.

If any person liable for any tax under Sections 713.03 or 713.04 shall ship or transport his products or any part thereof out of the City without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation from the City shall be the basis for the assessment of the tax imposed in such sections. The Clerk-Treasurer shall prescribe equitable and uniform rules for ascertaining such values.

In determining value, however, as regards sales from one to another of affiliated companies or persons or under other circumstances where the relationship between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the Clerk-Treasurer shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

Gross income included in the measure of the tax under Section 713.03 and 713.04, except in the case of the production of natural gas, shall neither be added nor deducted in computing the tax levied under the other sections of this article.

A person exercising any privilege taxable under Section 713.03 or 713.04 and engaging in the business of selling his natural resources or manufactured products at retail in this City shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in Section 713.05 for the privilege of engaging in the business of selling such natural resources or manufactured products at retail in this City. But any person exercising any privilege taxable under Section 713.03 or 713.04 and engaging in the business of selling his natural resources or manufactured products to manufacturers, wholesalers or jobbers and in the case of limestone, sand, gravel or other mineral products to commercial consumers, shall not be required to pay the tax imposed in Section 713.05 for the privilege of selling such natural resource products or manufactured products at wholesale.

Manufacturers exercising any privilege taxable under Section 713.04 shall not be required to pay the tax imposed in Section 713.05 for the privilege of selling their manufactured products for delivery outside this State, but the gross income derived from the sale of such manufactured products outside this State shall be included in determining the measure of the tax imposed on such manufacturer in Section 713.04.

A person exercising privileges taxable under the other sections of this article producing coal, oil, natural gas, minerals, timber or other natural resource products the production of which is taxable under Section 713.03 and using or consuming the same in his business shall be deemed to be engaged in the business of mining and producing coal, oil, natural gas, minerals, timber or other natural resource products for sale, profit or commercial use, and shall be required to make returns on account of the production of the business showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers, which rules the Clerk-Treasurer shall prescribe. (Ord. 6-28-77.)

713.03 PRODUCTION OF COAL AND OTHER NATURAL RESOURCES PRODUCTS.

Upon every person engaging or continuing within this City in the business of producing for sale, profit or commercial use any natural resource products, the amount of such tax to be equal to the value of the articles produced as shown by the gross derived from the sale thereof by the producer except as herein provided, multiplied by the respective rates as follows: Coal, 1%; limestone or sandstone, quarried or mined, 1.5%; oil, 1.5%; natural gas, in excess of the value of five thousand dollars (\$5,000.00), 5%; blast furnace slag, 2.5%; sand, gravel and other mineral products not quarried or mined, 2.0%; timber, 1.5%; other natural resource products, 2%. The measure of this tax is the value of the entire production in this City regardless of the place of sale or the fact that delivery may be made to points outside the State. (Ord. 9-23-03.)

713.04 MANUFACTURED OR COMPOUND PRODUCTS.

Upon every person engaging or continuing within this City in the business of manufacturing, compounding or preparing for sale, profit or commercial use, either directly or through the activity of others in whole or part, any article or articles, substance or substances, commodity or commodities, or electric power not produced by public utilities taxable under other provisions of this article, the amount of the tax shall be equal to the value of the article, substance, commodities or electric power manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same except as hereinafter provided, multiplied by the rate of 0.3%. The measure of this tax is the value of the entire product, manufactured, compounded or prepared in this City for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the State. (Ord. 9-23-03.)

713.05 BUSINESS OF SELLING TANGIBLE PROPERTY; SALES EXEMPT.

Upon every person engaging or continuing within this City in the business of selling any tangible property whatsoever, real or personal, including the sale of food in hotels, restaurants, cafeterias, confectionaries and other public eating houses, except sales by any person engaging or continuing in the business of horticulture, agriculture, or grazing, or of selling stocks, bonds or other evidences of indebtedness, there is likewise hereby levied, and shall be collected, a tax equivalent to 0.35% of the gross income of the business except that in the case of a wholesaler or jobber, the tax shall be equal to 0.135% of the gross income of the business.
(Ord. 9-23-03.)

713.06 PUBLIC SERVICE OR UTILITY BUSINESS.

Upon any person engaging or continuing within this City in any public service or utility business, except railroad car, railroad express, pipe lines, telephone and telegraph companies, water carriers by steamship or steamboat, motor vehicle carriers and municipally owned public utilities, there is likewise hereby levied and shall be collected taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows: electric light and power companies, 3.0% on sales and demand charges for domestic purposes and commercial lighting and 2.0% on sales and demand charges for all other purposes; natural gas companies, 3.0% on the gross income; the gross income for this purpose to be determined by deducting gross income from all sales to consumers the amount of tax paid by the taxpayers under Section 713.03; toll bridge companies, 2.0%; and upon all other service or utility businesses, 2.0%; private water companies, 1.0% on the gross income. The measure of this tax shall not include gross income derived from commerce between this State and other states of the United States or between this State and foreign countries.
(Ord. 9-23-03.)

713.07 BUSINESS OF CONTRACTING.

Upon every person engaging or continuing within this City in the business of contracting, the tax shall be equal to 2.0% of the gross income of the business.
(Ord. 9-23-03.)

713.08 BANKING AND OTHER FINANCIAL INSTITUTIONS.

Upon every person engaging or continuing within this State in the business of making loans of money, credit goods or things in action, who because of such activity is required to obtain a license from the Commissioner of Banking of the State, the tax shall be 1.0% of the gross income of any such activity. (Ord. 9-23-03.)

713.09 BUSINESS OF OPERATING AMUSEMENTS.

Upon every person engaging or continuing within this City in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, race track, radio broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to 0.355% of the gross income of the business.
(Ord. 9-23-03.)

713.10 SERVICE BUSINESS OR CALLING NOT OTHERWISE SPECIFICALLY TAXED.

Upon every person engaging or continuing within this City in any service business or calling not otherwise specifically taxed under this article, there is likewise hereby levied and shall be collected a tax equal to 1.0% of the gross income of any such business. (Ord. 9-23-03.)

713.11 BUSINESS OF COLLECTING RENTALS, ROYALTIES, ETC.

Upon every corporation or association engaging or continuing within this City in the business of collecting incomes from the use of real or personal property or of any interest therein, whether by lease, conveyance or otherwise, and whether the return is in the form of rentals, royalties, fees, interest or otherwise, the tax shall be 1.0% of the gross income of any such activity. (Ord. 9-23-03.)

713.12 EXEMPTIONS; NONEXEMPT BUSINESS.

The provisions of this article shall not apply to:

- (a) Insurance companies which pay the State a tax upon premiums; provided, however, that such exemptions shall not extend to that part of the gross income which is received for the use of real property, other than property in which any such company maintains its office or offices, in this City, whether such income is in the form of rentals or royalties;
- (b) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members;
- (c) Societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit;
- (d) Corporations, associations and societies organized and operated exclusively for religious or charitable purpose; provided, however, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of West Virginia Code Article 19-4;
- (e) Building and loan associations and federal savings and loan associations;
- (f) Persons engaged in the business of industrial loans under authority granted them by West Virginia Code Article 31-7; provided, however, that such exemption shall not extend to that part of the gross income of such persons which is recorded from the use of real property owned, other than the business house or building in which the business of the industrial loan company is transacted, whether such income be in the form of rentals or royalties. (Ord. 9-23-03.)

713.13 COMPUTATION OF TAX; PAYMENT.

The taxes levied hereunder will be payable in quarterly installments on or before the expiration of thirty days from the end of the quarter in which they accrue. The taxpayer shall, within thirty days from the expirations of each quarter, make out an estimate of the tax for which he is liable for such quarter, verify the same by oath, and mail the same together with a remittance in the form required by Section 713.21 for the amount of the tax, to the office of the Clerk-Treasurer. The Clerk-Treasurer, if he deems it necessary to insure payment of the tax, may require return and payment under this section for other than quarter year periods. (Ord. 9-23-03.)

713.14 RETURN AND REMITTANCE BY TAXPAYER.

On or before thirty days after the end of the tax year each person liable for the payment of a tax under Section 713.02 shall make a return showing the gross proceeds of sales or gross income of business, trade or calling, and compute the amount of tax chargeable against him in accordance with the provisions of this article and deduct the amount of quarterly payment (as hereinbefore provided), if any and transmit with his report a remittance in the form required by Section 713.21 covering the residue of the tax chargeable against him to the office of the Clerk-Treasurer; such return shall be verified by the oath of the taxpayer, if made by an individual or by the oath of the president, vice-president, secretary or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, joint venture, association, trust or any other group or combination acting as a unit, any individual delegated by such firm, copartnership, joint venture, association, trust or any other group or combination acting as a unit shall make the oath on behalf of the taxpayer. If for any reason it is not practicable for the individual to make the oath, the same may be made by any duly authorized agent. The Clerk-Treasurer for good cause shown, may extend the time for making the annual return on the application of any taxpayer and grant such reasonable additional time within which to make the same as may, by him be deemed advisable. (Ord. 6-28-77.)

713.15 ALTERNATE RETURN AND REMITTANCE BY TAXPAYER.

A duplicate of the returns required to be made to the State Tax Commissioner under the provisions of West Virginia Code Article 11-13 filed with the Clerk-Treasurer at the same time such returns are required to be filed with the State Tax Commission and payment by the taxpayer to the Clerk-Treasurer of the amount of tax payable to the City under the provisions of this article, or filing of a form to be provided by the City and payment of the amount of tax due, shall be deemed full compliance with this article. (Ord. 6-28-77.)

713.16 ERRONEOUS COMPUTATION.

If a taxpayer makes any error in computing the tax assessable against him, the Clerk-Treasurer shall correct such error or reassess the proper amount of taxes and notify the taxpayer of his action by mailing to him promptly a copy of the corrected assessment, and any additional tax for which such taxpayer may be liable within ten days after the receipt of such statement.

If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess shall be immediately refunded to the taxpayer upon the requisition of the Clerk-Treasurer and shall be payable out of any funds available for the purpose. The taxpayer may, at his election, apply an overpayment credit to taxes subsequently accruing hereunder. (Ord. 6-28-77.)

713.17 FAILURE TO MAKE RETURN.

If any person fails or refuses to make a return, either in whole or in part, if the Clerk-Treasurer has reasonable ground to believe that any return made is so deficient as not to form the basis of a satisfactory assessment of the tax, he may proceed as he deems best to obtain information on which to base the assessment of the tax. The Clerk-Treasurer may, by himself or his duly appointed agent, make examination of the books, records and papers, and audit the accounts of any such person, and may take the evidence, administered by himself or his agents, on oath, of any person who he may believe shall be in possession of any relevant information. As soon as possible after procuring such information as he may be able to obtain as to any person failing or refusing to make a return, the Clerk-Treasurer shall proceed to assess the tax and shall notify that person assessed of the amount of the tax. The assessment of the tax by the Clerk-Treasurer shall be final as to any person who refused to make a return. (Ord. 6-28-77.)

713.18 APPEAL CORRECTION OF ASSESSMENT; INJUNCTION.

If any person having made the return and paid the tax as provided by this article feels aggrieved by the assessment so made upon him by the Clerk-Treasurer he may apply to Council by petition in writing, within thirty days after notice is mailed to him by the Clerk-Treasurer for a hearing and a correction of the amount of the tax so assessed upon him by the Clerk-Treasurer, in which petition shall be set forth the reasons why such hearing should be granted and the amount such tax should be reduced. Council shall promptly consider such petition and may grant such hearing or deny the same. If denied, the petitioner shall be forthwith notified thereof; if granted, Council shall notify the petitioner of the time and place fixed for such hearing. After such hearing, Council may make such order in the matter as may appear to it just and lawful, and shall furnish a copy of such order to the petitioner. Any person improperly charged with any tax and required to pay the same may recover the amount paid, together with interest, in proper action or suit against the Clerk-Treasurer and the circuit court of the county in which the taxpayer resides or is located shall have the original jurisdiction of any action to recover any tax improperly collected. It shall not be necessary for the taxpayer to protest against the payment of the tax or to make any demand to have the same refunded in order to maintain such suit. In any suit to recover taxes paid or to collect taxes, the court shall adjudge costs to such extent and in such manner as may be deemed equitable. Upon presentation of a certified copy of a judgment so obtained, the Clerk-Treasurer shall issue his requisition upon any funds available for the purpose.

No injunction shall be awarded by any court or judge to restrain the collection of the taxes imposed by this article, or any part of due from any person, except upon the ground that the assessment thereof was in violation of the Constitution of the United States, or of this State; or that the same were fraudulently assessed; or that there was a mistake made in the amount of taxes assessed upon such person. In the latter case, no such injunction shall be awarded, unless application shall first have been made to Council to correct the alleged mistake and Council shall have refused to do so, which fact shall be stated in the bill, and unless the complainant shall have paid to the Clerk-Treasurer all taxes appearing by the bill of complaint to be owing. (Ord. 6-28-77.)

713.19 TAX YEAR.

The assessment of taxes herein made and the returns required therefor shall be for the year ending on December 31, and beginning on January 1, and if the taxpayer, in exercising a privilege taxable under this article keeps the books reflecting the same on a basis other than the calendar year, he may, with assent of the Clerk-Treasurer make his annual returns and pay taxes for the year covering his accounting period, as shown by the method of keeping his books. (Ord. 6-28-77.)

713.20 TAX CUMULATIVE.

The tax imposed by this article shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, trade or calling. A person exercising a privilege taxable under this article, subject to the payment of all licenses and charges which are conditions precedent to exercising the privilege taxes, may exercise the privilege for the current year upon the condition that he shall pay the tax accruing under this article. (Ord. 6-28-77.)

713.21 PAYMENT.

All remittances of taxes imposed by this article shall be made to the Clerk-Treasurer, by bank draft, certified check, cashier's check, money order or certificate of deposit, who shall issue his receipts therefor to the taxpayers and shall pay the moneys into the City Treasury to be kept and accounted for as provided by law.
(Ord. 6-28-77.)

713.22 PAYMENT BY NONRESIDENT CONTRACTORS.

Every person or company engaging or continuing within the City in the business of contracting who is a nonresident of the State, shall, in addition to all other provisions of this article pay or guarantee the payment of the amount of the privilege tax imposed in Section 713.07 for the privilege of engaging in the business of contracting within the City based on the amount of the building permit issued by the Clerk-Treasurer for the work to be performed by such person or company.

The privilege tax payment to be made by such person or company shall be made at the time such permit is issued by the Clerk-Treasurer of the City. The person or company may, in lieu of payment in cash of such privilege tax obligation, guarantee the payment of the privilege tax herein provided for by delivering to the City a bond, with good and sufficient surety, providing for the payment of such privilege tax on or before the estimated date of the completion of the work to be performed by such person or company engaged in the business of contracting.
(Ord. 6-28-77.)

713.23 LIEN OF TAX DUE AND UNPAID.

A tax due and unpaid under this article shall be a debt due the City. It shall be a personal obligation of the taxpayer and shall be a lien upon the property used in the business or occupation upon which the tax is imposed provided no such tax lien shall be enforceable against a purchaser (including lien creditor) for valuable consideration without notice, unless docketed in the office of the county court in the county wherein such property is located before a deed therefor to such purchaser is delivered for record to the clerk of the county court of such county.

A penalty of five percent (5%) of the tax shall be added for any default for thirty days or less and for each succeeding thirty days elapsing before payment, there shall be an additional penalty of one percent (1%) all of which penalty shall be secured by the lien herein provided.
(Ord. 6-28-77.)

713.24 COLLECTING BY SUIT; PAYMENT BY RECEIVER.

The Clerk-Treasurer may collect taxes due and unpaid under this article, together with all accrued penalties, by action in assumpsit, motion for judgment, or other appropriate proceeding in the circuit court of the county in which the privilege tax had been exercised. After delinquency shall have continued sixty days, the Clerk-Treasurer may proceed in the circuit court of the county in which the privilege tax had been exercised to obtain an injunction restraining the further exercise of the privilege until full payment shall have been made of all taxes and penalties due under this article. In any proceeding under this section upon judgment or decree for the plaintiff he shall be awarded his costs.

In the event a business subject to the tax imposed by this article shall be operated in connection with a receivership or insolvency proceeding, the court under whose direction such business is operated shall, by the entry of a proper order in the case, make provision for the regular payment of such taxes as the same become due.
(Ord. 6-28-77.)

713.25 TAX LIEN UPON PROPERTY OF PERSON SELLING OUT OR QUITTING BUSINESS.

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

(Ord. 6-28-77.)

713.26 PRIORITY IN DISTRIBUTION IN RECEIVERSHIP, ETC., PERSONAL LIABILITY OF ADMINISTRATOR.

In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of any person, firm or corporation, all taxes due and unpaid under this article shall be paid from the first money available for distribution in priority to all claims, except taxes and debts due the United States and the State of West Virginia. Any person charged with the administration of an estate who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid under this article, which are chargeable against the person, firm or corporation whose estate is in administration.

(Ord. 6-28-77.)

713.27 CERTIFICATE TO CLERK OF COUNTY COURT OF ASSESSMENT OF TAXES.

The Clerk-Treasurer for the more effective collection of the tax may file with the clerk of the County Court of any county a certified copy of an assessment of taxes under this article. A certificate so filed shall be recorded in a book provided for the purpose and thereafter shall constitute binding notice of the lien created by this article upon all lands of the taxpayer located in the county as against all parties whose interest arose after such recordation. Upon payment of taxes delinquent under this article the lien of which shall have been recorded the Clerk-Treasurer shall certify in duplicate the fact and amount of payment and the balance due, if any, and shall forward the certificates, one to the taxpayer and one to the clerk of the county court of the county where the taxpayer shall have been listed as delinquent. The clerk of the county court shall record the certificate in the book in which releases are recorded, without payment of any additional fee. From the date that such certificate is admitted to record the land of the taxpayer in the county shall be free from any lien for taxes under this article accrued to the date that the certificate was issued.

(Ord. 6-28-77.)

**713.28 COLLECTION BY DISTRAINT; OTHER REMEDIES;
REPORT OF COLLECTION.**

The Clerk-Treasurer may take any action authorized under the City Charter and general laws of the State for collection of taxes and penalties delinquent under this article. The Clerk-Treasurer may distrain upon any goods, chattels or intangibles represented by negotiable evidences of indebtedness of any taxpayer delinquent under this article for the amount of all taxes and penalties accrued and unpaid hereunder. The Clerk-Treasurer may require the assistance of the sheriff of any county of the State in levying such distress in the county of which such sheriff is an officer. A sheriff so collecting taxes due hereunder shall be entitled to compensation in the amount of all penalties collected over and above the principal amount of the tax due, but in no case shall such compensation exceed twenty-five dollars (\$25.00). All taxes and penalties so collected shall be reported within ten days after collection to the Clerk-Treasurer, who shall prescribe by general regulation the manner of remittance of such funds and of all owing the collecting officer and the compensation due him under this article. The lien created by this article on real estate may be enforced by suits in equity. (Ord. 6-28-77.)

713.29 ADMINISTRATION OF ARTICLE.

The administration of this article is vested in and shall be exercised by the Clerk-Treasurer who shall prescribe forms and reasonable rules of procedure in conformity with this article for the making of returns and for the ascertainment, assessment and collection of the taxes imposed hereunder; and the enforcement of any of the provisions of this article in any of the courts of the State shall be under the exclusive jurisdiction of Council, who shall require the assistance of and act through the City Attorney or other attorney appointed for the purpose. (Ord. 6-28-77.)

713.30 REPORTS.

No officer or employee of the City shall make known in any manner not provided by law the information contained in the individual tax returns or the amounts of payment reported thereon under the provisions of this article, or permit any such report to be seen or examined except as provided by law.

A person who fails or refuses to make a return required by the Clerk-Treasurer or a person who prints or publishes any information concerning individual payments reported under the provisions of this section, except as provided by law, shall be guilty of a misdemeanor.

Whoever violates any provision of this section shall be fined not more than one hundred dollars (\$100.00) or imprisoned not exceeding thirty days, or both. (Ord. 6-28-77)

713.99 PENALTY.

No person shall refuse or fail to make the return provided to be made in Sections 713.14 and 713.15 or make any false or fraudulent return or false statement in any return with intent to defraud the City or to evade the payment of the tax, or any part thereof, imposed by this article or aid or abet another in any attempt to evade the payment of the tax or any part thereof imposed by this article and no president, vice-president, secretary or treasurer of any corporation shall make or permit to be made for any corporation or association any false return or any false statement in any return required by this article with the intent to evade the payment of any tax hereunder. Any person violating any provision of this section shall be fined not more than one hundred dollars (\$100.00) or imprisoned not exceeding thirty days or both. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of false swearing and shall be fined not more than one hundred dollars (\$100.00). (Ord. 6-28-77)

ARTICLE 719
Public Utility Tax

<p>719.01 Definitions.</p> <p>719.02 Imposed; amount.</p> <p>719.03 Collection; time of payment; accounting; reports.</p> <p>719.04 Maintenance and inspection of records.</p> <p>719.05 Exemptions.</p>	<p>719.06 Liability; enforcement authority.</p> <p>719.07 Enforcement provisions.</p> <p>719.08 Notice to utilities.</p> <p>719.99 Penalty.</p>
---	---

CROSS REFERENCES

Authority to levy - see W. Va. Code 8-13-5(a)
B. & O. Tax on utilities - see BUS. & TAX. 713.06

719.01 DEFINITIONS.

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

- (a) "Public utility service" means any service or tangible personal property purchased within the City from a seller, as hereinafter in this section defined, namely: telephone service; electric service; gas service, including bottled or liquid gas, if the seller thereof is classified as a public utility subject to the jurisdiction of the State Public Service Commission.
- (b) "Purchaser" means any person who purchases, uses or consumes a public utility service.
- (c) "Seller" means any person, whether a public service corporation, or a private corporation, classified as a public utility and subject to the jurisdiction of the State Public Service Commission, who sells, furnishes or supplies a public utility service.
- (d) "User" means the owner or tenant of private residential property or the owner or tenant of property used for commercial or industrial purposes, and every combination thereof, of every kind.
(Ord. 2-26-85.)

719.02 IMPOSED; AMOUNT.

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

(Ord. 2-26-85.)

719.03 COLLECTION; TIME OF PAYMENT; ACCOUNTING; REPORTS.

It shall be the duty of every seller, in acting as the tax-collecting medium or agency for the City, to collect from each purchaser for the use of the City the tax hereby imposed and levied at the time of collecting the purchase price charged for its public utility service, and the amount of tax actually collected during each calendar month shall be reported by each seller to the City, and each seller shall remit the amount of tax shown by such report to have been collected by the City on or before the last day of the second calendar month following the month in which collected, as well as the name and address of any purchaser who has failed or refused to pay the tax so imposed and levied. The required reports shall be in the form prescribed by the City Clerk-Treasurer.

(Ord. 2-26-85.)

719.04 MAINTENANCE AND INSPECTION OF RECORDS.

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

(Ord. 2-26-85.)

719.05 EXEMPTIONS.

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

- (a) Purchases of public utility service for resale.
- (b) Purchases of public utility service by the United States of America, the State of West Virginia and the political subdivisions, municipalities, boards, commissions, authorities and public corporations thereof.
- (c) Purchases of tangible personal property, such as appliances as distinguished from the public service supplied.
- (d) Charges for telephone services which are paid by the insertion of coins into coin operated telephones and specific charges or tolls for telephone calls to points outside the corporate limits of the City.
- (e) Nonrecurring charges incidental to the furnishing of public utility service.
(Ord. 2-26-85.)

719.06 LIABILITY; ENFORCEMENT AUTHORITY.

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

The Clerk-Treasurer shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this article.
(Ord. 2-26-85.)

719.07 ENFORCEMENT PROVISIONS.

Any amount of tax due and unpaid under this article shall be a debt due the City. Such debt shall be a personal obligation of the purchaser, which shall be enforceable as provided by West Virginia Code 8-13-15 or in any other manner provided by law for compelling the payment of taxes due municipalities.
(Ord. 2-26-85.)

719.08 NOTICE TO UTILITIES.

The tax hereby imposed and levied shall not be effective until the City gives sixty days' written notice by certified mail of the effective date of this article to any public utility, doing business within the City, which is required to collect the tax imposed and levied hereby.
(Ord. 2-26-85.)

719.99 PENALTY.

Any purchaser failing or refusing to pay the tax hereby imposed and levied and any seller or purchaser violating any of the provisions hereof or any lawful rule or regulation promulgated hereunder shall be fined not more than one hundred dollars (\$100.00). The failure or refusal to pay the tax for public utility service purchased, used or consumed during different statement periods shall constitute separate and distinct offenses.
(Ord. 2-26-85.)

ARTICLE 725
Intoxicating Liquor Tax

725.01 Tax levied.

CROSS REFERENCES

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

725.01 TAX LEVIED.

There is hereby imposed a tax of five percent (5%) of the retail purchase price of any and all intoxicating liquors purchased from the Alcohol Beverage Control Commissioner or from any person licensed to sell wine at retail to the public under the provision of West Virginia Code Article 60-8 within the corporate boundaries of the Municipality. Such tax shall be levied upon the purchaser of intoxicating liquor or wine, and shall be added to any collected with the retail purchase price of such intoxicating liquor or wine. Such tax shall be received by the Municipality from the State Treasury pursuant to the rules and regulations adopted by the Alcohol Beverage Control Commissioner. Provided however, that such tax shall not be collected on intoxicating liquors sold by or purchased from holders of a license issued under the provisions of West Virginia Code Article 60-7.

(Ord. 7-14-81)

ARTICLE 731
Municipal Service Fees

731.01 Service fee levied .

731.99 Penalty.

CROSS REFERENCES

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

731.01 SERVICE FEE LEVIED.

(a) Amount of Fee. All owners or occupants of residential and commercial dwellings within the City shall be assessed a fee to be collected by and through the Benwood Municipal Water Works and deposited into a special fire equipment fund established by the City. The assessed fee is established as follows:

- (1) One dollar (\$1.00) per month per occupied residential dwelling unit.
- (2) Five dollars (\$5.00) per month per occupied commercial dwelling unit.

(b) This section shall lapse upon the collection of revenue sufficient to retire an indebtedness of the Fire Department in the amount of one hundred twenty thousand dollars (\$120,000).
(Ord. 6-9-87)

731.99 PENALTY.

Whoever violates this article shall be fined not more than ten dollars (\$10.00) for each violation. (Ord. 6-9-87)

ARTICLE 735
Solicitation of Funds

<p>735.01 Definition.</p> <p>735.02 Permission from Mayor required.</p> <p>735.03 Applications for permission.</p> <p>735.04 Statements to be filed by applicants.</p> <p>735.05 Granting of permission; duration.</p>	<p>735.06 Procedure where days requested for solicitations conflict.</p> <p>735.07 False statements to procure permission.</p> <p>735.99 Penalty.</p>
---	--

CROSS REFERENCES

Solicitation of charitable funds - see W. Va. Code Art. 29-19
Obtaining money by false pretenses - see W. Va. Code 61-3-24 et seq.
Trespass - see GEN. OFF. 533.02

735.01 DEFINITION.

"Public solicitation for funds" shall specifically include "tag" days, "poppy" and "forget-me-not" sales and any other solicitation carried on in a similar manner and shall mean any and all forms or methods of collecting funds or public contributions.

735.02 PERMISSION FROM MAYOR REQUIRED.

No person, group of persons, firm, corporation, club, organization, association or institution or the agent of such firm, corporation, club, organization, association or institution, shall make or conduct any public solicitation for funds on the streets of the City without first making written application to the Mayor and receiving written permission from the Mayor to make or conduct such public solicitation.

735.03 APPLICATIONS FOR PERMISSION.

Any application presented to the Mayor for permission to make or conduct a public solicitation shall be presented at least ten days before the proposed date of the solicitation and shall state:

- (a) The name of the person, group of persons, firm, corporation, club, or organization, association or institution, making the application;
- (b) The names and addresses of the officers of the applicant, if there are officers, or three responsible persons affiliated with the applicant;
- (c) The purpose for which the funds are to be collected and the use that is to be made of them.

- (d) The names and addresses of all persons who will be active or otherwise take part in the solicitation;
- (e) The proposed time of the solicitation; and
- (f) The manner in which the solicitation is to be made.

735.04 STATEMENTS TO BE FILED BY APPLICANTS.

Before granting permission to any applicant to make or conduct such a public solicitation, the Mayor shall require every applicant to file in his office a statement or affidavit, signed by an officer of the applicant, or some other responsible person satisfactory to the Mayor, stating what percentage of the funds collected by such public solicitation are to remain and be used in the City and the percentage of funds collected which are to go elsewhere, the name of the organization which will receive them and the use to which they will be put, and that no persons who are not bona fide residents of the City will take any part in the public solicitation of funds. The Mayor may also require the applicant to present to him such other information as he, in his judgment shall deem advisable.

735.05 GRANTING OF PERMISSION; DURATION.

When and if the Mayor is satisfied that the applicant is responsible that the proposed public solicitation will be properly conducted by bona fide residents of the City, that all funds raised by such solicitation are to remain and be used in the City, or that the proportion of the funds collected which is to go outside of the City is proper, that the organization receiving them is a nationally recognized organization, and that the use to be made of such funds is a proper use, he shall give written permission to the applicant to make the public solicitation. Such permission shall definitely state the period of time during which the applicant is to be permitted to make or conduct its solicitation.

735.06 PROCEDURE WHERE DAYS REQUESTED FOR SOLICITATIONS CONFLICT.

In the event there should be more than one application made to the Mayor requesting permission to conduct public solicitation on the same day, the Mayor shall seek to have all applicants except one voluntarily change the time requested, giving special consideration to national organizations which hold a nationwide appeal on a particular day. If no agreement can be reached among the applicants, and they insist on pressing their applications for an identical day, the Mayor shall give written permission to the organization first filing the application in his office.

735.07 FALSE STATEMENTS TO PROCURE PERMISSION.

No person knowingly shall make any false statement in order to procure permission from the Mayor to make or conduct any public solicitation.

735.99 PENALTY.

(EDITOR'S NOTE: See Section 705.99 for general Code penalty.)

ARTICLE 739
Wine Dealers

- 739.01 Application of article on sale of wines; definitions.** **739.03 Application for license.**
739.02 Licenses, fees; general restrictions.

CROSS REFERENCES

Authority to levy - see W. Va. Code 8-13-4
Liquor control - see GEN. OFF. Art. 521

**739.01 APPLICATION OF ARTICLE ON SALE OF WINES;
DEFINITIONS.**

The provisions of this article shall relate solely to distribution and retail sale of wine within the City as provided by West Virginia Code Article 60-8. For the purposes of this article, "distributor", "grocery store", "retailer", and "wine" shall be as defined by West Virginia Code 60-8-2.

739.02 LICENSES, FEES; GENERAL RESTRICTIONS.

No person may engage in business in the capacity of a distributor or retailer without first obtaining a license from the Clerk-Treasurer nor shall a person continue to engage in any such activity after his license has expired, been suspended or revoked. No person may be licensed in more than one of such capacities at the same time.

The Clerk-Treasurer shall collect an annual fee of one hundred fifty dollars (\$150.00) per year for a retailer's license.

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

A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

739.03 APPLICATION FOR LICENSE.

A license shall be issued by the Clerk-Treasurer to any person who has received a similar license from the State and who submits an application therefor, accompanied by the proper license fee, stating the following under oath:

- (a) The name and location of the business for which the application is made.
- (b) The name and residence address of the person signing the application.
- (c) The name, address and telephone number of the person having primary responsibility for operation of the business.
- (d) If the applicant is a corporation, the names of the officers of the corporation and the address of its principal office.
- (e) The West Virginia wine license number for the same year and location.

**ARTICLE 743
Fire Service Fee**

- | | | | |
|---------------|--|---------------|--|
| 743.01 | Legislative purpose. | 743.05 | Fire Service Fee Appeals Board. |
| 743.02 | Definitions. | 743.06 | Funds expended from Fire Service Fee Account. |
| 743.03 | Imposition of fire protection charge. | 743.07 | Payment; late penalty. |
| 743.04 | Protests. | | |

743.01 LEGISLATIVE PURPOSE.

The Council recognizes that the Volunteer Fire Department of the City provides essential fire protection services for the City and its citizens. It is further recognized that the cost for providing these services is increasing resulting in the need to accumulate additional funds for said Volunteer Fire Department to continue to provide these vital services. The citizens of the City and the owners of the respective businesses located in the City are the direct beneficiaries of the services provided by the Benwood Volunteer Fire Department as contemplated by West Va. Code 8-13-13. As such it is proper that they bear a portion of the costs for providing said services.

The charges and expenses with respect to each of such owner or business shall be set forth in this article and shall be based and imposed in part on the recognition that:

- (a) The use of a building is a factor which affects the cost of providing fire protection services and, accordingly, nonresidential property compared to residential property requires additional equipment and manpower to provide effective fire protection services and, therefore, it is the intent of this article that owners and occupiers of residential buildings pay a lesser fee for fire protection services to reflect the reduced cost of their protection. (Passed 8-12-08.)

743.02 DEFINITIONS.

As used in this article:

- (a) "Residential building or structure" means a building in which sleeping and living accommodations are provided for normal living purposes as outlined in the Uniform Code for Fire Protection. This does not include hotels, motels, or other buildings with the primary intention of use for transient lodging.
- (b) "Industrial building or structure" means any structure the primary use of which is to manufacture, compound, assemble, process, package or treat raw materials or other products.

- (c) “Commercial building or structure” means for purposes of this article, any building or structure not meeting the definitions of a residential building or structure or an industrial building or structure.
- (d) “Mixed use building” means any structure that has a combination of residential and nonresidential uses. The predominant usage of the structure shall determine at what rate it is charged. In determining predominant usage, the square footage used for each use shall be the deciding factor.
- (e) “Occupied unit” means a part of a residential structure occupied by a person or persons, designed for independent housekeeping and generally having independent utilities and appliances. (Passed 8-12-08.)

743.03 IMPOSITION OF FIRE PROTECTION CHARGE.

There is hereby imposed upon the owners of all residential buildings or structures in the City a fire protection fee or charge as follows:

- (a) There is hereby imposed upon the owners of residential structures located in the City of Benwood, a fire protection fee of twenty-four dollars (\$24.00) for each occupied unit in said structure per year.
- (b) There is hereby imposed upon the owners of commercial buildings or structures located in the City, a fire protection fee in the amount of one hundred dollars (\$100.00) per building or structure per year.
- (c) There is hereby imposed upon the owners of industrial buildings or structures in the City a fire protection fee in the amount of two hundred dollars (\$200.00) per building or structure per year.
(Passed 8-12-08.)

743.04 PROTESTS.

The owner of any building or structure feeling aggrieved by said charge or fee may protest the same by giving notice to the City Clerk setting forth the reason for said protest within ten days of receiving their bill for said services. Upon receiving a protest, the Fire Service Fee Board shall set a time for a hearing within thirty days of the filing of said protest. The Fire Service Fee Board shall render its decision based upon the record made at the hearing within a reasonable time not to exceed twenty days. Any ruling given by the Fire Service Fee Board shall be made in writing and mailed promptly via certified mail to the owner making said protest. The amount of the fee, if any, due the City under such decision shall be payable at the time of the normal fee due dates. Any person aggrieved by such decision may, within thirty days from the date of said decision, file a Petition duly certified with the Circuit Court of Marshall County requesting review by certiorari; otherwise the decision becomes final and conclusive.
(Passed 8-12-08.)

743.05 FIRE SERVICE FEE APPEALS BOARD.

There shall be established a Fire Service Fee Board consisting of seven members. Each member of the Board shall be appointed for a term of one year. There shall be no prohibition against said members being appointed for more than or in excess of one term. The members of the Board shall be appointed by Council, not more than two of which shall be Council members of the City. Furthermore, at least two of the members of the Board shall be residents of the City who are not employed by said City. The Board shall be tasked with hearing protests of the fire service fee imposed upon the owners of property located within the City and with making recommendations to Council regarding all matters concerning the collection, late fees and expenditures of funds collected pursuant to the imposition of this Fire Service Fee.
(Passed 8-12-08.)

743.06 FUNDS EXPENDED FROM FIRE SERVICE FEE ACCOUNT.

The Fire Service Fee Board shall make recommendations to Council regarding the funds to be expended from the Fire Service Fee account, The full authority and control of all funds expended from the Fire Service Fee account shall rest with Council. These funds are to be used exclusively for the benefit of the Benwood Volunteer Fire Department and its operation of providing fire protection services for the citizens and businesses of the City. When the Volunteer Fire Department requests expenditures from the Fire Service Fee fund, the Fire Chief or his designee will forward a written notice of request for said funds through the Fire Service Fee Board. A complete and accurate listing of all funds received and expended into and from this account shall be listed in the Wheeling News-Register and the Moundsville Daily Echo by the first day of each year, subsequent to the respective collection date.
(Passed 8-12-08.)

743.07 PAYMENT; LATE PENALTY.

Fire Service Fees shall be paid in one installment. Said fee shall be due on September 1st. Payment shall be considered delinquent if not received by September 30th. If the fees are not paid on or before said date, a penalty of ten percent (10%) of the outstanding amount due will be added for each month thereafter.
(Passed 8-12-08.)

ARTICLE 747
New Industry Tax Incentive (Repealed)

(EDITOR'S NOTE: Former Article 747 was repealed by Ordinance 4-23-19.)

