

CODIFIED ORDINANCES OF BENWOOD

PART NINE- STREETS, UTILITIES AND PUBLIC SERVICES CODE

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**ARTICLE 905
 General Provisions**

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| <p>905.01 Removal of snow from sidewalks.</p> <p>905.02 Removal of ice from sidewalks; sanding.</p> <p>905.03 Removing earth, debris from sidewalks upon notice.</p> | <p>905.04 Placing merchandise upon streets or sidewalks.</p> <p>905.05 Obstructing gutters.</p> <p>905.06 Dropping heavy material upon pavement.</p> <p>905.99 Penalty.</p> |
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CROSS REFERENCES

- General power to regulate- see W.Va. Code 8-12-5(1)
 Special charges for street cleaning, etc. -see W. Va. Code 8-13-13
 Connection to State road system- see W.Va. Code 17-4-26 et seq.
 Action for damages occasioned by defective streets, etc. -see
 W.Va. Code 17-10-17
 Street obstructions- see TRAF. 311.01

905.01 REMOVAL OF SNOW FROM SIDEWALKS.

The owner or occupant, or any person having the care of any building or lot of land bordering on any street or square within the City, where there is a sidewalk graded, or graded and paved, shall, within a reasonable time following any snowfall, cause the same to be removed therefrom. The provisions of this section shall apply to the falling of snow or ice from any building.

905.02 REMOVAL OF ICE FROM SIDEWALKS; SANDING.

Whenever the sidewalk or part thereof adjoining any building or lot of land on any street shall be encumbered with ice, it shall be the duty of the owner or occupant, or any person having the care of such building or lot, to cause such sidewalk to be made safe and convenient by removing the ice therefrom or by covering the same with sand or some other suitable substance within a reasonable time after the ice accumulates on such sidewalk or part thereof.

905.03 REMOVING EARTH, DEBRIS FROM SIDEWALKS UPON NOTICE.

It shall be the duty of the owner or occupier of any building or grounds bordering on any street or square within the City where there is a graded, or graded and paved sidewalk adjoining such building or grounds to begin to remove or cause to be removed any earth, debris or other obstruction of any kind from such sidewalk adjoining such building or grounds within twenty-four hours after written notice to remove such earth, debris or other obstruction shall have been received by such owner or occupier from the Mayor and to continuously prosecute the work of the removal until such earth, debris or other obstruction shall have been wholly removed from the sidewalk. Each day or fraction of a day that the terms of this section are not complied with shall constitute a separate offense and a violation of this section. Whenever the person whose duty it was to remove such earth, debris or other obstruction fails to comply with the notice issued by the Mayor under this section, the Mayor shall be authorized to employ, at the expense of the City, such aid as may be necessary to have such earth, debris or other obstruction removed, and such person shall, in addition to any penalty provided for violation of the provisions of this section, be liable for the expense of such removal.

905.04 PLACING MERCHANDISE UPON STREETS OR SIDEWALKS.

No person shall set or place any goods, wares or merchandise, by way of exposing them for sale, in any street or alley, nor on the sidewalk of any street or alley so as to project from the building line of such street or alley more than fifteen percent (15%) of the width of such sidewalk, but in no case shall the goods, wares or merchandise extend more than two feet from the building line. This section shall not apply to any person in the immediate act of moving or removing merchandise, or any other thing in the way of his trade or business, or for the use of his family, or for goods, wares or merchandise, exposed by auctioneers on the day of public sale, the same being so arranged as not to obstruct the passage through the street or along the sidewalk.

905.05 OBSTRUCTING GUTTERS.

No person shall obstruct any gutter so as to impede the passage of water flowing in the gutter in any street or alley in the City without a permit from the Mayor.

905.06 DROPPING HEAVY MATERIAL UPON PAVEMENT.

No person shall, while unloading any heavy material, throw or let the same fall upon the pavement of any street, alley or sidewalk in the City without placing such sufficient protection over the pavement, street, alley or sidewalk as will prevent injury to the same.

905.99 PENALTY.

(EDITOR'S NOTE: See Section 101.99 for general Codified Ordinances penalty.)

ARTICLE 909
Community Antenna Television Systems

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|---------------|------------------------------|---------------|----------------------|
| 909.01 | Permit required. | 909.07 | Insurance. |
| 909.02 | Application. | 909.08 | Installation. |
| 909.03 | Fee. | 909.09 | Maintenance. |
| 909.04 | Bond. | 909.10 | Operation. |
| 909.05 | Issuance of permit. | 909.99 | Penalty. |
| 909.06 | Extension prohibited. | | |

CROSS REFERENCES

Power to regulate- see W. Va. Code 8-12-5(4)
Tampering with CATV- see GEN. OFF. 533.06

909.01 PERMIT REQUIRED.

No person shall install, maintain, operate or cause any of these to be done, at any point over any City street, alley-way or public place or public property, any cable, equipment and other apparatus for transmission of television type electrical impulses or connect such cable, equipment or other apparatus as may be necessary to connect from any such point to private property without securing a permit and paying the fee therefor pursuant to the provisions of this article.

(Ord. 6-9-64.)

909.02 APPLICATION.

Any person desiring to obtain the permit required by Section 909.01 shall make application therefor to the Clerk-Treasurer. The application shall be verified under oath and shall set forth:

- (a) The name, business address and residence of the applicant, if a natural person; or if a corporation, its name, date and place of incorporation, address of its principal office; or if a partnership, association or unincorporated company, the names of the partners or the persons comprising the association or company with the place of business and the residence of each such partner or person.
- (b) A description of points or places where any such cable or apparatus is or is intended to be over any such street, alley-way or public property in the City.
- (c) A plan or design of the method or methods of installation. Such application shall be accompanied by the fee required by this article.

(Ord. 6-9-64.)

909.03 FEE.

A fee of twenty-five dollars (\$25.00) for the permit herein required shall be payable annually on July 1 of each year. If such fee is not paid by August 1 of any year, a penalty of ten percent (10%) thereof shall be collected in addition to such fee for each month or fraction of month such fee is unpaid. If such fee is not paid by October 1 of any year, then no permit shall be deemed to exist and a renewal application shall be filed, complying with all the requirements of this article. (Ord. 6-9-64.)

909.04 BOND.

Before any such permit shall be issued the applicant shall deliver to the Clerk-Treasurer a corporate surety bond payable to the City in the amount of one thousand dollars (\$1,000), conditioned upon the installation and maintenance of the cable, equipment or apparatus permitted by this article in accordance with the requirements of this article. (Ord. 6-9-64.)

909.05 ISSUANCE OF PERMIT.

When the conditions of this article have been complied with, the Clerk-Treasurer shall issue a written permit giving the name and address of the grantee, the nature of the permit granted and the date when the same was granted. (Ord. 6-9-64.)

909.06 EXTENSION PROHIBITED.

No grantee of a permit under the terms of this article shall extend its cables, equipment and apparatus after the permit is granted until written notice of such extensions has been given the Clerk-Treasurer. (Ord. 6-9-64.)

909.07 INSURANCE.

The grantee of any permit agrees that:

- (a) The plan of installation and the actual installation of any wires, cables, features and other appurtenances shall be in accordance with good engineering practices and shall be in a good workmanlike manner in accordance with the specifications of the National Electrical Code. These wires shall be installed in a manner so as not to interfere with the installation of any public utilities engaged in servicing the City and so as not to endanger any citizen or his property, or the property of the City.
- (b) It shall take out and maintain throughout the term of the permit, or any renewals thereof, insurance in amounts of not less than one hundred thousand dollars/three hundred thousand dollars (\$100,000/300,000) limits of public liability insurance and twenty-five thousand dollars (\$25,000) property damage liability policy and in a company authorized to do business in the State, the policy for which shall name directly or by endorsement thereon the City as an insured for the protection of the City against any loss or damage which it may sustain as a result of the construction, maintenance or operation of the installations permitted herein for property damage, and to provide adequate protection for any and all claims and damages thereunder. (Ord. 6-9-64.)

909.08 INSTALLATION.

(a) All material, both conducting and supporting shall have sufficient mechanical strength to adequately meet the requirements as determined by the length of the span and climatic conditions of this area.

(b) Approved vertical clearances shall be provided and maintained under all cables and lines in accordance with the classification of the areas over which the aerial facilities pass--viz: public or private property, streets, railroads, etc.

(c) Adequate vertical and horizontal clearances shall be provided and maintained from all aerial and service line facilities of the power, light and telephone companies, and shall comply with their specifications as to clearances when attached to their supporting equipment or are within the proximity of their equipment.

(d) Approved grounding and lightning protection shall be provided for the system and at each service, as needed, in accordance with accepted practice for television transmission systems.

(e) All installation and design shall be in accordance with accepted good engineering practice.

(f) The approval of plans for the construction and installation of television transmission systems shall be in accordance with Section 909.07(a).
(Ord. 6-9-64.)

909.09 MAINTENANCE.

Adequate maintenance shall be carried out on all television transmission systems to keep them in a safe and sound operating and mechanical condition. The Building Inspector shall periodically inspect the installations to see that proper maintenance is being practiced, and where necessary, shall issue orders for any maintenance work needed to eliminate any hazardous conditions detrimental to the City, its citizens and their property.
(Ord. 6-9-64.)

909.10 OPERATION.

The operation of television transmission systems shall be the sole responsibility of the grantee of a permit insofar as rendering safe and satisfactory service to their customers. All complaints of interference occurring between grantees of permits for the operation of television transmission systems shall be remedied. If no satisfactory or amicable agreement can be reached in eliminating the interference problem, the Clerk-Treasurer upon recommendation of the Building Inspector, shall forward a request to the Federal Communications Commission, asking that they make a complete investigation of the condition existing, and requesting that they take the necessary steps to eliminate the trouble.
(Ord. 6-9-64.)

909.99 PENALTY.

(EDITOR'S NOTE: See Section 101.99 for general Codified Ordinance penalty.)

CHAPTER 913
Sidewalks

| | | | |
|---------------|--------------------------------------|---------------|---|
| 913.01 | Curb ramps. | 913.05 | Procedure for non-compliant sidewalks. |
| 913.02 | Standards and specifications. | 913.06 | Damage by City. |
| 913.03 | Inspection. | | |
| 913.04 | Maintenance. | | |

CROSS REFERENCES

General power to regulate - see W. Va. Code 8-12-5(1)

913.01 CURB RAMPS.

All sidewalks shall have curb ramps for areas where the walk level raises in excess of half an inch ($\frac{1}{2}$ "). Ramps must be at least 36 inches in width and marked with a "detectable warning", such as textured concrete. Curb ramps located at the corner of a block, or corner ramps, may have defined edges or flared (graduated) edges.
(Passed 5-28-13.)

913.02 STANDARDS AND SPECIFICATIONS.

(a) A sidewalk permit is required for any construction, reconstruction or repair of a sidewalk. Upon installation, the Code Enforcement Officer, or persons appointed, will inspect the sidewalk for compliance. If the sidewalk does not meet or pass the inspection, the property owner will have thirty (30) days to bring it into compliance.

(b) The property owner must notify the City during normal business hours when the concrete is ready for disposal. The City Maintenance Crew must inspect the concrete prior to approving disposal at a specified area. The property owner may dispose of the concrete at their expense.

(c) All construction, grading, repairing or replacing of such sidewalks shall comply with U.S.D.O.T. Federal Highway Administration requirements. Please contact the Code Enforcement Officer, or persons appointed, for specifications.

(d) Concrete in sidewalks shall be at least four inches (4") in thickness, and in driveway approaches shall be either six (6") or eight (8") inches to correspond with the driveway thickness. The width of the perimeter sidewalks shall be four feet (4').

(e) The sub-grade shall be either two inches (2") of compacted aggregate base for a 4" concrete walk, or a minimum of six inches (6") of a compacted aggregate base for a driveway, or other pre-approved base (contact the Code Enforcement Officer, or persons appointed, for approval).

(f) Control joints are to match adjacent joint spacing, but not to exceed five foot (5') intervals perpendicular to the curb. When applicable, three foot (3') or varied joint spacing should be used.

(g) The sidewalk shall have a transverse slope of one quarter (1/4") inch per foot (1" per 4' width) with the low side adjacent to the roadway.

(h) The surface of the sidewalk shall be rough (usually broomed).
(Passed 5-28-13.)

913.03 INSPECTION.

Once the sidewalk has been inspected, a determination shall be made concerning the status of the sidewalk. The determinations are as follows:

- (a) In Compliance: Sidewalk meets the size and hazard requirements. No action is required.
- (b) Out of Compliance: Sidewalk fails to meet the size requirements and/or hazard requirements. Action is required with guidelines established by the Zoning Board and enforced by the Code Enforcement Officer or persons appointed. Sidewalks existing prior to the passage of this chapter shall not be deemed out of compliance due to width or construction requirements. Provided that should said sidewalks be replaced or modified, then they shall be brought into compliance with this chapter.
- (c) Emergency Status: Sidewalk fails to meet the size requirements and/or hazard requirements and is an immediate hazard to public health and safety. Immediate action is required with guidelines established by the Zoning Board and enforced by the Code Enforcement Officer of persons appointed.
- (d) Trees, stumps, roots, bushes, and other greenery shall be trimmed or removed before work commences on the sidewalk.
(Passed 5-28-13.)

913.04 MAINTENANCE.

All maintenance of sidewalks shall be the duty of the property owner. No owner shall fail to maintain a sidewalk and must adhere to the size requirements and prevent hazards.
(Passed 5-28-13.)

913.05 PROCEDURE FOR NON-COMPLIANT SIDEWALKS.

(a) Upon inspection or observation of a non-compliant sidewalk, the Code Enforcement Officer or person appointed shall send correspondence to the property owner confirming the sidewalk is no longer in compliance and providing a quote for having the sidewalk constructed, reconstructed or repaired by a third party contracted by the City. The property owner has 60 days to bring the sidewalk up to code on their own or to commit to allowing the third party contracted by the City to complete the work.

(b) Failure to comply within 60 days shall result in the City bringing the sidewalk into compliance and charging the property owner for the materials and labor.

- (c) The property owner may choose one of the following payment options:
- (1) Pay invoice total in full.
 - (2) Property Assessment.
 - (3) Enhancement Fee.

(d) A sidewalk/tree enhancement fee shall be implemented at the City Council's discretion. (Passed 5-28-13.)

913.06 DAMAGE BY CITY.

If a sidewalk is removed or damaged by the City due to infrastructure maintenance, upgrades, repairs, or unforeseen circumstances, the City will repair or replace the sidewalk to its condition prior to damage. Prior to work commencing, a photo will be taken of said sidewalk for a record of the sidewalk condition. The photo will be used by the Zoning Board to determine the portion of the homeowner's responsibility.
(Passed 5-28-13.)

ARTICLE 915
Planting and Care of Trees

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|---------------|---|---------------|---|
| 915.01 | Definitions. | 915.08 | Dead or diseased tree removal on private property. |
| 915.02 | Duties and responsibilities. | 915.09 | Tree removal permit required. |
| 915.03 | Distance from curb and sidewalk. | 915.10 | Removal of stumps. |
| 915.04 | Distance from street corners and fire-plugs. | 915.11 | Encroachment. |
| 915.05 | Utilities. | 915.12 | Visibility at intersections. |
| 915.06 | Public tree care. | 915.13 | Interference with City official. |
| 915.07 | Pruning, corner clearance. | 915.14 | Review by City Council. |
| | | 915.99 | Penalty. |

CROSS REFERENCES

Power to regulate - see W. Va. Code 8-12-5(10) et seq.

915.01 DEFINITIONS.

(a) "Street trees" are herein defined as trees, shrubs, bushes, and all other woody vegetation on land lying within fifteen (15) feet of either side of all streets, avenues, or ways within the City.

(b) "Park trees" are herein defined as trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the City, or to which the public has free access as a park. (Ord. 7-22-14.)

915.02 DUTIES AND RESPONSIBILITIES.

It shall be the responsibility of the Code Enforcement City Official or any other individual designated by Council to study, investigate, and counsel the City regarding the preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and other public areas. It shall further be said individuals' responsibility to ensure compliance with this article. (Ord. 7-22-14.)

915.03 DISTANCE FROM CURB AND SIDEWALK.

The distance trees may be planted from curbs or curb-lines and sidewalks will be in accordance with the three species size classes listed in this article, and no trees may be planted closer to any curb or sidewalk than the following: Small Trees, 2 feet; Medium Trees, 3 feet; and Large Trees, 4 feet. (Ord. 7-22-14.)

915.04 DISTANCE FROM STREET CORNERS AND FIRE-PLUGS.

No Street Tree shall be planted closer than 35 feet of any street corner, measured from the point of nearest intersecting curbs or curblines. No Street Tree shall be planted closer than 10 feet from any fireplug. (Ord. 7-22-14.)

915.05 UTILITIES.

No Street Trees other than those species listed as Small Trees may be planted under or within 10 lateral feet of any overhead utility wire, or over or within 5 lateral feet of any underground water line, sewer line, transmission line or other utility. (Ord. 7-22-14.)

915.06 PUBLIC TREE CARE.

The City shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The Code Enforcement City Official may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. This Section does not prohibit the planting of Street Trees by adjacent property owners providing that the selection and location of said trees is in accordance with the remainder of this article. (Ord. 7-22-14.)

915.07 PRUNING, CORNER CLEARANCE.

Every owner of any tree overhanging any street or right-of-way within the City shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet (8') above the surface of the street or sidewalk. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. (Ord. 7-22-14.)

915.08 DEAD OR DISEASED TREE REMOVAL ON PRIVATE PROPERTY.

The City shall have the right to cause the removal of any dead or diseased trees on private property within the City, when such trees constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the City. The Code Enforcement City Official will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within sixty days after the date of service of notice. Where the full amount due the City is not paid by the owner, agent or occupant within sixty days after the cutting and removal of such trees, deleterious and unhealthful growth, or other noxious matter, the Clerk-Treasurer shall record in the Office of the Clerk of the County Court, a sworn statement showing the cost and expense incurred for the work, the date, place and property on which the work was done and the name of the owner thereof. Recordation of such sworn statement shall constitute a lien upon the property in favor of the City and the payment thereof may be enforced as other liens are enforced under the laws of West Virginia. (Ord. 7-22-14.)

915.09 TREE REMOVAL PERMIT REQUIRED.

It shall be unlawful for any person to cut down, kill or otherwise destroy any tree having a caliper greater than four inches measured six inches above grade, growing on privately owned land within the Town, without a tree removal permit issued by the Code Enforcement City Official. (Ord. 7-22-14.)

915.10 REMOVAL OF STUMPS.

All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.
(Ord. 7-22-14.)

915.11 ENCROACHMENT.

Hedges, vines, vegetation and plants in the plant community may be planted in locations where their growth does not encroach on public right-of-way. Encroachment on private property is commonly a private Civil matter; the City will not become involved in such disputes unless it deems there is significant safety concern.
(Ord. 7-22-14.)

915.12 VISIBILITY AT INTERSECTIONS.

It shall be unlawful to install, plant, place, erect, maintain or to allow the installation, planting, placing, erecting or maintaining of any fence, wall, hedge, vegetation, or other structure or planting in a clear sight triangle or visibility triangle, which by obstructing the view of any driver constitutes a traffic hazard and it is the duty of the owner of any real property to remove from the property any tree, plant, vine, shrub, fence, wall, hedge, vegetation or plants in the plant community or other similar obstruction, or part thereof, which by obstructing the view of any driver constitutes traffic hazard.
(Ord. 7-22-14.)

915.13 INTERFERENCE WITH CITY OFFICIAL.

It shall be unlawful for any person to prevent, delay or interfere with the Code Enforcement City Official, or any of its agents, while engaging in and about the planting, cultivation, mulching, pruning, spraying, or removing of any Street Trees, Park Trees, or trees on private grounds, as authorized in this article. (Ord. 7-22-14.)

915.14 REVIEW BY CITY COUNCIL.

The City Council shall have the right to review the conduct, acts and decisions of the Code Enforcement City Official. Any person may appeal from any ruling or order of the Code Enforcement City Official to the City Council who may hear the matter and make final decision.
(Ord. 7-22-14.)

915.99 PENALTY.

Any person violating any provision of this article shall be, upon conviction or a plea of guilty, subject to a fine not to exceed \$500.00. (Ord. 7-22-14.)

CHAPTER THREE - Utilities

- Art. 923. Sewer Regulations.
 Art. 927. Sewer Rates.
 Art. 933. Water Rates.
 Art. 937. Stormwater Management and Surface Water Discharge Control.

ARTICLE 923 Sewer Regulations

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| <p>923.01 Definitions.</p> <p>923.02 Use of sewer system essential; connection required.</p> <p>923.03 Application for sewer service required.</p> <p>923.04 Sewer service charges paid by City.</p> <p>923.05 Industrial use of sewers.</p> <p>923.06 Deposit for sewer service.</p> <p>923.07 Duration of liability for sewer service.</p> <p>923.08 User's responsibility to keep sewer clean.</p> <p>923.09 Leaks.</p> <p>923.10 City's right of access.</p> <p>923.11 Sewer taps only by authorized persons.</p> | <p>923.12 Unauthorized connections prohibited.</p> <p>923.13 Approval of connections by City Inspector.</p> <p>923.14 City not liable for damage.</p> <p>923.15 Storm water prohibited.</p> <p>923.16 Separation of downspouts from sewage system.</p> <p>923.17 Discharges into the public sewage system.</p> <p>923.18 Private waste water disposal.</p> <p>923.19 Prohibited discharges to sewer.</p> <p>923.20 Wastewater facility damage.</p> <p>923.21 Control manhole.</p> <p>923.99 Penalty.</p> |
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CROSS REFERENCES

- Power to regulate utility systems - see W. Va. Code 8-12-5(32)
 Sewer connections- see W. Va. Code 8-18-22
 Sanitary Board- see ADM. Art. 149

923.01 DEFINITIONS.

(a) "Biochemical oxygen demand" (BOD) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20°C, expressed in milligrams per liter.

(b) "Building drain" shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

(c) "Building sewer" shall mean the extension from the building drain to the public sewer or other place of disposal, also called house connection.

(d) "Combined sewer" shall mean a sewer intended to receive both wastewater and storm or surface water.

(e) "Easement" shall mean an acquired legal right for the specific use of land owned by others.

(f) "Floatable oil" is oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.

(g) "Garbage" shall mean the animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.

(h) "Industrial wastes" shall mean the wastewater from industrial processes, trade, or business as distinct from domestic or sanitary wastes.

(i) "Natural outlet" shall mean any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

(j) "May" is permissive (see "shall").

(k) "Person" shall mean any individual, firm, company, association, society, corporation, or group.

(l) "pH" shall mean the logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen-ion concentration of 10^{-7} .

(m) "Properly shredded garbage" shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch (1.27 centimeters) in any dimension.

(n) "Public sewer" shall mean a common sewer controlled by a governmental agency or public utility.

(o) "Sanitary sewer" shall mean a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

(p) "Sewage" is the spent water of a community. The preferred term is "wastewater," (subsection (y) hereof).

(q) "Sewer" shall mean a pipe or conduit that carries wastewater or drainage water.

(r) "Sewer system" means the complete municipal sewer system of the City, including the existing sewer system now owned and operated by the City and including the additions, extensions and improvements to be constructed thereto pursuant to the plan referred to in the preamble and including all sanitary sewers, storm sewers, trunk sewers, intercepting sewers, lateral sewers, all sewer lines, plants for the treatment and disposal of sewage, and waste matters, lift stations, all properties, real or personal or intangible, plants, buildings, pipes, lines, machinery, franchises, fixture, equipment, necessary appurtenant or incidental to such system, including all facilities of any kind or nature hereafter constructed or acquired by the City and used in the sewer system.

(s) "Shall" is mandatory (see "may, ").

(t) "Slug" shall mean any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.

(u) "Storm drain" (sometimes termed "storm sewer") shall mean a drain or sewer for conveying water, groundwater, subsurface water, or unpolluted water from any source.

(v) "Public Works Director" shall mean the Public Works Director of Wastewater Facilities, and/or of Wastewater Treatment Works, and/or of Water Pollution Control of the City of Benwood, or his authorized deputy, agent, or representative.

(w) "Suspended solids" shall mean total suspended matter that either floats on the surface of, or is in suspension in, water, waste-water, or other liquids, and that is removable by laboratory filtering as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as nonfilterable residue.

(x) "Unpolluted water" is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

(y) "Wastewater" shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water, and stormwater that may be present.

(z) "Wastewater facilities" shall mean the structures, equipment, and processes required to collect, carry away, and treat domestic and industrial wastes and dispose of the effluent.

(aa) "Wastewater treatment works" shall mean an arrangement of devices and structures for treating wastewater, industrial wastes, and sludge. Sometimes used as synonymous with "waste treatment plant" or "wastewater treatment plant" or "water pollution control plant."

(bb) "Watercourse" shall mean a natural or artificial channel for the passage of water either continuously or intermittently.

(cc) "Sanitary board" shall mean that board appointed according to provision of Article 149. (Passed 7-11-61; 2-14-17.)

923.02 USE OF SEWER SYSTEM ESSENTIAL; CONNECTION REQUIRED.

(a) The use of the sewer system of the City, together with any and all such additions, extensions and improvements as may from time to time be added thereto, or incorporated therein, are hereby severally and respectively determined and declared to be essential for the protection and preservation of the public health, comfort, safety, economy and general welfare of the inhabitants of the City.

(b) The owner, tenant or occupant of each lot or parcel of land within the City which abuts a street, alley or other public way, containing a sewer service, or which is located within one hundred feet thereof and upon which lot or parcel a building or other inhabitable structure has been or shall be erected for residential, commercial or industrial use, shall be required to connect the building or structure to the sewer system, or to such parts thereof as may from time to time be extended sewers to be or become available within such distance, and shall thereafter refrain from using or cease to use any other method for the several and respective sewer services which are now, or may hereafter become, available as aforesaid; and shall thereafter pay all charges, fees and rates as provided for. All such connections shall be in accordance with the rules and regulations which shall be adopted from time to time by Council. The rules and regulations may provide for reasonable charges for making such connections.
(Ord. 7-11-61.)

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

(d) It shall be unlawful to discharge to any natural outlet within the City of Benwood, or in any area under the jurisdiction of said City, any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article.

(e) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.

(f) A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the front building may be extended to the rear building and the whole considered as one building sewer, but the City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection afore- mentioned.

(g) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Public Works Director, to meet all requirements of this article.

(h) The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9 shall apply.

(i) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

(j) The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City, or the procedures set forth in appropriate specifications of the ASTM and the WPCF Manual of Practice No. 9. All such connections shall be made gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Public Works Director before installation.

(k) The applicant for the building sewer permit shall notify the Public Works Director when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the Public Works Director or his representative.

(l) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be re-stored in a manner satisfactory to the City. (Passed 2-14-17.)

923.03 APPLICATION FOR SEWER SERVICE REQUIRED.

No person shall use the City's sewer system without first making written application for such service to the City and paying all costs, charges, fees and deposits incident thereto. Such application shall be made on forms furnished by the City and shall constitute an agreement by the applicant with the City to abide by all provisions of this article and such applicable rules of the City in regard to the use of the sewer system as may from time to time be operated and effected. Application for service by firms, partnerships, associations and corporations shall be tended only by their duly authorized agent, and the official title of such party shall be signed to the application. (Ord. 7-11-61.)

923.04 SEWER SERVICE CHARGES PAID BY CITY.

There shall be no free service rendered by the sewer system and if the City or any department, agency or instrumentality thereof shall avail itself of the services and facilities of the sewer system, it shall pay for the use of such services and facilities at the established rates. Revenues received from the services and facilities furnished by the sewer system to the City shall be applied and accounted for in the same manner as other revenues derived from the operation of the sewer system; provided, however, that nothing herein contained shall be construed as requiring the City to avail itself of the services and facilities afforded by the sewer system. (Ord. 7-11-61.)

923.05 INDUSTRIAL USE OF SEWERS.

In-cases where the character of sewage from any manufacturing or industrial plant, building or premises is such that it imposes a burden upon the sewer system of the City in addition to the burden imposed by the average sewage entering the sewer system, such additional charge shall be made therefor as Council shall deem to be fair and equitable to meet the additional cost of collections, treatment and disposal of such sewage. Council may, if it deems the same advisable, compel the owner, tenant or occupant of such manufacturing or industrial plant, building or premises to treat such sewage in such manner as shall be specified by Council before discharging such sewage into the sewer system of the City.

In cases where the character of sewage from any manufacturing or industrial plant, building or premises is such that it imposes a burden upon the sewer system of the City which is substantially less than the burden imposed by the average sewage entering the sewer system, Council may grant such reduction in the amount of the sewer charges as it shall deem to be fair and equitable. (Ord. 7-11-61)

923.06 DEPOSIT FOR SEWER SERVICE.

The owner, tenant or occupant of each lot or parcel of land within the City who is now, or who may hereafter become, obligated to pay sewer service charges shall, simultaneously with the filing of an application for sewer service with the Clerk-Treasurer, deposit an amount hereafter prescribed by Council as reasonable and equitable, to insure payment of sewer service charges as the same become due and payable, and such deposit shall be held by the City until final settlement of the user's account. Any unused balance of the deposit will be refunded without interest. (Ord. 7-11-61)

923.07 DURATION OF LIABILITY FOR SEWER SERVICE.

Liability for service shall begin, as to all users now connected with the City's sewer system, or located within one hundred feet thereof, which can use the services and facilities of the sewer system, on the effective date of this section; and thereafter on the date each subsequent user is connected to the City's sewer system, or the sewer system or a part thereof is located within one hundred feet thereof and can use the services and facilities of the sewer system, shall continue thereafter unless disconnected for nonpayment or other cause. No allowance shall be made for vacant houses unless a request in writing to have the sewer service shut off is received by the City, nor will any allowance be made for any shut-off period less than thirty days. (Ord. 7-11-61)

923.08 USER'S RESPONSIBILITY TO KEEP SEWER CLEAN.

The owner, tenant or occupant of the property shall be continuously responsible for maintaining and keeping the sewer pipe leading to and between the plumbing system of his premises to the City's main sewer clean and free from obstruction, and shall not cause or permit any article or thing to be introduced into such pipe which causes a stoppage thereof. Failure to keep the sewer pipe leading from the plumbing system to the sewer main clean and maintained in proper condition shall give the City the right to cut off the water connection, which shall not be reconnected until the sewer pipe is cleaned and maintained properly. (Ord. 7-11-61)

923.09 LEAKS.

No allowance or adjustment of any sewer bill shall be made for any leaks of any nature occurring in the user's side of the meter. (Ord. 7-11-61.)

923.10 CITY'S RIGHT OF ACCESS.

The applicant shall grant or cause to be granted to the City without cost, all rights, easements, permits and privileges which are necessary for the rendering of sewer service. Duty authorized employees of the City shall have access at all reasonable hours to the premises of the applicant for the purpose of installing or removing any of its property, examining pipes or fixtures or for any purpose incidental to the rendering of sewer service. (Ord. 7-11-61.)

923.11 SEWER TAPS ONLY BY AUTHORIZED PERSONS.

No person, except those persons duly employed or authorized by the City for such purpose, shall tap the City's sewer mains. (Ord. 7-11-61.)

923.12 UNAUTHORIZED CONNECTIONS PROHIBITED.

No person shall connect to, or turn on, any sewer service, or cut-in, interconnect, tap or make any alteration, to any main or distribution or collection pipe of the City's sewer system or permit any connection or tapping to be made to the City's sewer system or his premises or the premises occupied by him, or knowingly use the City sewer service from connections in violation of any of the provisions of this article, or any rules or regulations adopted by Council with respect thereto. (Ord. 7-11-61.)

923.13 APPROVAL OF CONNECTIONS BY CITY INSPECTOR.

No sewer service shall be connected until the plumbing and connections incident thereto have been inspected and approved by the City Plumbing Inspector. (Ord. 7-11-61.)

923.14 CITY NOT LIABLE FOR DAMAGE.

The City shall not be liable for any damage resulting from bursting of any sewer main, service pipe or cock, or by discontinuing the operation of its sewer collection, treatment and disposal facilities, for repairs, extensions or connections, or from the accidental failure of the sewage collection, treatment and disposal facilities from any cause whatsoever. In case of emergency the City shall have the right to restrict the use of its sewage collections, treatment and disposal facilities in any reasonable manner for the protection of the City and its sewer system. (Ord. 7-11-61.)

923.15 STORMWATER PROHIBITED.

Discharge of storm water runoff into the sewer system is hereby prohibited and all owners of property connecting to the sewer system shall provide adequate means for excluding storm water runoff. (Ord.9-17-81.)

923.16 SEPARATION OF DOWNSPOUTS FROM SEWAGE SYSTEM.

(a) No person or entity shall install or allow to remain a connection of a roof or other downspout, to a customer service line which connects directly or indirectly with the City of Benwood's sanitary sewer.

(b) Upon determination that this type of connection is being made installed the owner shall be notified by certified mail that he or she shall remove such connection(s) within sixty (60) days.

- (c)
- (1) Any owner who fails to remove the connection(s) within sixty (60) days, shall be fined not more than two hundred dollars (\$200.00) for each violation. Each day in which any such violation continues shall be deemed a separate offense.
 - (2) A violator of this article shall become liable to the City for any expense, loss or damage suffered by the City by reason of such violation, including collection of any fine.
 - (3) The City or any interested person may institute a suit for injunction in the Circuit Court of Marshall County, West Virginia, to restrain any person, firm or corporation or a governmental unit from violating or failing to comply with the provisions of this ordinance.
(Passed 8-9-11.)

923.17 DISCHARGES INTO THE PUBLIC SEWAGE SYSTEM.

(a) Purpose. The purpose of this section is to control discharges into the public sewage collection system and wastewater treatment plant that interfere with the operations of the system, cause blockage and plugging of pipelines, interfere with normal operation of pumps and their controls, and contribute waste of a strength or form that either causes treatment difficulties or is beyond the treatment capability of the wastewater treatment plant.

(b) Definitions.

- (1) Grease: Material composed primarily of fats, oil and grease (FOG) from animal or vegetable sources. The terms fats, oils, and grease shall be deemed as grease by definition. Grease does not include petroleum based products.
- (2) Grease trap. A device for separating and retaining waterborne greases and grease complexes prior to the wastewater exiting the trap and entering the sanitary sewer collection and treatment system. These devices also serve to collect settleable solids, generated by and from food preparation activities, prior to the water exiting the trap and entering the sanitary sewer collection and treatment system.
- (3) Food service facilities: Those establishments primarily engaged in activities of preparing, serving, or otherwise making available for consumption foodstuffs and that use one or more of the following preparation activities: cooking by frying (all methods), baking (all methods), grilling, sautéing, rotisserie cooking, broiling (all methods), boiling, blanching, roasting, toasting, or poaching. Also included are infrared heating, searing, barbecuing, and any other food preparation activity that produces a hot, non-drinkable food product in or on a receptacle that requires washing. These facilities include, but are not limited to, restaurants, cafeterias, hotels, motels, hospitals, nursing homes, schools, grocery stores, prisons, jails, churches, camps, caterers, manufacturing plants, or any other sewer users as determined by the Code Enforcement Official or City Council Representative, who discharge applicable waste. Exempted herefrom are self-contained single family living units.
- (4) User: Any person or establishment including those located outside the jurisdictional limits of the City who contributes, causes, or permits the contribution or discharge of wastewater into the City's wastewater collection or treatment system, including persons who contribute such wastewater from mobile sources, such as those who discharge hauled wastewater.
- (5) Oil/Water Separator: An approved and industry standard system that is specifically designed and manufactured to separate oil from water. The system shall allow the oil to be collected and removed on a regular basis as to prevent it from being discharged into the wastewater collection system. Only oil/water separators manufactured for that specific operation will be approved. Adequate support literature from the manufacturer will be required so as to allow a proper review by the Code Enforcement Official or City Council Representative.

(c) Control Plan for Grease and Food Waste.

- (1) Any new construction, renovation, or expansion of Food Service Facilities shall be required to submit to the City a grease and food waste control plan that will effectively control the discharge of undesirable materials into the wastewater collection system.

- (2) Any existing Food Service Facilities may be required to submit a FOG and food waste control plan that will effectively control the discharge of undesirable materials into the wastewater collection system.

(d) General Criteria. All existing, proposed, or newly remodeled Food Service Facilities inside the City of Benwoods wastewater service area shall be required to install, at the user's expense, an approved, properly operated and maintained grease trap.

- (1) Sanitary sewer flow. Sanitary sewer flows from toilets, urinals, lavatories, etc. shall not be discharged into the grease trap. These flows shall be conveyed separately to the sanitary sewer service lateral.
- (2) Floor drains. Only floor drains which discharge or have the potential to discharge grease shall be connected to a grease trap.
- (3) Garbage grinders/disposers. It is recommended that solid food waste products be disposed of through normal solid waste/garbage disposal means. If a grinder/disposal is used it must be connected to the grease trap. The use of grinders is discouraged since it decreases the operational capacity of the grease trap and will require an increased pumping frequency to ensure continuous and effective operation.
- (4) Dishwashers. Commercial dishwashers must be connected to the grease trap. Dishwashers discharge soap and hot water which can melt grease and allow it to pass through an undersized grease trap. Traps must be sized accordingly to allow enough detention time to allow water to cool and grease to solidify and float to the top of the trap.
- (5) Location. Grease trap shall be installed inside and/or outside the building upstream from the sanitary sewer service lateral connection. This will allow easy access for inspection, cleaning, and removal of the intercepted grease at any time.
- (6) Pass through limits. No User shall allow wastewater discharge concentration from grease trap to exceed 100 MgPL (milligrams per liter) as identified by EPA method 1664A.

(e) Design Criteria.

- (1) Construction. Grease traps shall be designed and installed in accordance with the Manufacturer's instructions and shall have a minimum of two compartments with fittings designed for grease retention.
- (2) Access. Access to grease traps shall be available at all times, to allow for their maintenance and inspection. Exterior access to trap shall be provided by two manholes (one on each compartment) terminating at finished grade with cast iron frame and cover.
- (3) Load-bearing capacity. In outside areas where additional weight loads may exist, the grease trap shall be designed to have adequate load-bearing capacity. (Example: vehicular traffic in driving or parking areas.)
- (4) Inlet and outlet piping. Wastewater discharging to a grease trap shall enter only through the inlet pipe of the trap. Each grease trap shall have only one inlet and one outlet pipe.
- (5) Grease trap sizing. External grease traps shall have a capacity of not less than 1,000 gallons nor exceed a capacity of 3,000 gallons. If the calculated capacity exceeds 3,000 gallons, multiple units plumbed in series shall be installed.

- (f) Grease Trap Maintenance.
- (1) Cleaning/pumping.
- A. External: The user, at the user's expense, shall maintain all grease traps to assure proper operation and efficiency. Maintenance of grease trap shall include the complete removal of all contents, including floating materials, wastewater, and bottom sludge and solids. This work shall be performed by a qualified and licensed hauler. Decanting or discharging of removed waste back into the trap from which it was removed or any other grease trap, for the purpose of reducing the volume to be disposed, is prohibited. This service shall also include a thorough inspection of the trap and its components. Any needed repairs shall be noted. Repairs shall be made at user's expense.
- B. Internal: The user, at the user's expense, shall make weekly inspections, record their findings, and clean as needed.
- (2) Cleaning/pumping frequency. The grease trap must be pumped out completely a minimum of once every four months, or more frequently, as determined by the Code Enforcement Official or Council Representative of the City of Benwood, as needed to prevent carryover of grease into the sanitary sewer system.
- (3) Disposal. All waste removed from each grease trap must be disposed of with a facility approved to receive such waste in accordance with the provisions of this program. In no way shall the pumpage be returned to any private or public portion of the City's sanitary sewer collection system. All pumpage from grease traps must be tracked by a manifest, which confirms pumping, hauling, and disposal of waste. The customer must obtain and retain a copy of the original manifest from the hauler. No grease or oil may be dumped into any City storm or drain sewer.
- (4) Maintenance log. (External and Internal). A grease trap cleaning/maintenance log indicating each pumping for the previous 24 months shall be maintained by each Food Service Facility. This log shall include the date, time, amount pumped, hauler, and disposal site and shall be kept in a conspicuous location for inspection. Said log shall be made available to the Code Enforcement Official or his City Council Representative upon request.
- (5) Submittal of records.
- A. Each user shall have on site all cleaning and maintenance records. The maintenance records shall include the following information:
1. Facility name, address, contact person, and telephone number.
 2. Company name, address, telephone number, and contact name of person responsible for performing the maintenance, cleaning, pumping, or repair of grease trap.
 3. Types of maintenance performed.
 4. Dates maintenance was performed.
 5. Date of next scheduled maintenance.
 6. Copies of manifests.
- B. The Code Enforcement Official or City Council Representative will perform periodic inspections of these facilities and shall notify the user of any additional required maintenance or repairs. Upon written notification by the Code Enforcement Official or City

Council Representative, the user shall be required to perform the maintenance and records of said maintenance within 14 calendar days. Upon inspection by the Code Enforcement Official or City Council Representative, the user may be required to install, at his expense, additional controls to provide a complete system which prevents discharges of undesirable materials into the wastewater collection system.

(g) Additives. Any biological additive(s) placed into the grease trap or building discharge line including, but not limited to, enzymes, commercially available bacteria, or other additive designed to absorb, purge, consume, treat, or otherwise eliminate fats, oils, and grease shall require written approval by the Code Enforcement Official or City Council Representative prior to use. The use of such additives shall in no way be considered as a substitution to the maintenance procedures required herein.

(h) Chemical Treatment. Chemical treatments such as drain cleaners, acid, or other chemical solvents designed to dissolve or remove grease shall not be allowed to enter the grease trap.

(i) Enforcement and Fines.

- (1) Recovery of damages. When the discharge from a Food Service Facility causes an obstruction, damage, or any other impairment to the treatment works, or causes any expense, fine, penalty, or damage of whatever character or nature to the City of Benwood, the Code Enforcement Official shall invoice the owner for same incurred by the City. If the invoice is not paid, the Code Enforcement Official shall notify the City Attorney to take such actions as shall be appropriate to seek reimbursement.
- (2) Penalty. A violation of this section is subject to the Penalty provisions of Section 923.99 of the general Ordinances of the City of Benwood.
- (3) Remedies nonexclusive. The remedies provided for in this section are not mutually exclusive. The Code Enforcement Official or City Council Representative may take any, all, or any combination of these actions against a noncompliant person.
(Ord. 5-27-14.)

923.18 PRIVATE WASTE WATER DISPOSAL.

(a) Where a public sanitary or combined sewer is not available under the provisions of Article 923.02, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this article.

(b) Before commencement of construction of a private wastewater disposal system the owner(s) shall first obtain a written permit signed by the Director of Public Works. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the Director of Public Works. A permit and inspection fee of \$100.00 dollars shall be paid to the City at the time the application is filed.

(c) A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the Director of Public Works. The Director of Public Works shall be allowed to inspect the work at any stage of construction, and, in any event, the applicant for the permit shall notify the Director when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 128 hours of the receipt of notice by the Director of Public Works.

(d) The type, capacities, location, and layout of a private wastewater disposal system shall comply with all recommendations of the department of public health of the state of West Virginia. No permit shall be issued for any private wastewater disposal system employing sub-surface soil absorption facilities where the area of the lot is less than what is allowed pursuant to the West Virginia Bureau of Public Health. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

(e) At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in subsection (d) hereof, a direct connection shall be made to the public sewer within sixty (60) days in compliance with this ordinance, and any septic tanks, cesspools, and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.

(f) The owner(s) shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the City. (Some communities may desire to provide additional requirements that sludge removal from private disposal systems be performed by licensed operators and disposed of in some particular fashion).

(g) No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the health officer.
(Passed 2-14-17.)

923.19 PROHIBITED DISCHARGES TO SEWER.

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

- (a) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
- (b) Any waters containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any waste treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment plant.
- (c) Any waters or wastes having a pH lower than [5.5], or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the wastewater works.
- (d) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the wastewater facilities such as, but not limited to, ashes, bones, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, un-ground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
- (e) The following described substances, materials, waters, or waste shall be limited in discharges to municipal systems to concentrations or quantities which will not harm either the sewers, wastewater treatment process or equipment, will not have an adverse effect on the receiving stream, or will not otherwise endanger lives, limb, public property, or constitute a nuisance. The Public Works Director may set limitations lower than the limitations established in the regulations below if in his opinion such more severe limitations are necessary to meet the above objectives. In forming his opinion as to the acceptability, the Public Works Director will give consideration to such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater

treatment process employed, capacity of the wastewater treatment plant, degree of treatability of the waste in the wastewater treatment plant, and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer which shall not be violated without approval of the Superintendent are as follows:

- (1) Wastewater having a temperature higher than 150° Fahrenheit (65° Celsius).
 - (2) Wastewater containing more than 25 milligrams per liter of petroleum oil, nonbiodegradable cutting oils, or product of mineral oil origin.
 - (3) Wastewater from industrial plants containing floatable oils, fat, or grease.
 - (4) Any garbage that has not been properly shredded (See 923.01) Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.
 - (5) Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the Public Works Director for such materials.
 - (6) Any waters or wastes containing odor-producing substances exceeding limits which may be established by the Public Works Director.
 - (7) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Public Works Director in compliance with applicable state or federal regulations.
 - (8) Quantities of flow, concentrations, or both which constitute a "slug" as defined herein.
 - (9) Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
 - (10) Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system, or create a condition deleterious to structures and treatment processes.
- (f) If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in subsection (e) hereof, and which in the judgment of the Public Works Director, may have a deleterious effect upon the wastewater facilities, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Superintendent may:
- (1) Reject the wastes,
 - (2) Require pretreatment to an acceptable condition for discharge to the public sewers.
 - (3) Require control over the quantities and rates of discharge, and/or
 - (4) Require payment to cover added cost of handling the treating the wastes not covered by existing taxes or sewer charges under this article.

When considering the above alternatives, the Public Works Director shall give consideration to the economic impact of each alternative on the discharger. If the Public Works Director permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Public Works Director

- (g) The Public Works Director may require a user of sewer services to provide information needed to determine compliance with this article. These requirements may include:
- (1) Wastewaters discharge peak rate and volume over a specified time period.
 - (2) Chemical analyses of waste waters.
 - (3) Information on raw materials, processes, and products affecting wastewater volume and quality.
 - (4) Quantity and disposition of specific liquid, sludge, oil, solvent, or other materials important to sewer use control.
 - (5) A plot plan of sewers of the user's property showing sewer and pretreatment facility location.
 - (6) Details of wastewater pretreatment facilities.
 - (7) Details of systems to prevent and control the losses of materials through spills to the municipal sewer.
- (h) All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this ordinance shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Waste water," published by the American Public Health Association. Sampling methods, location, times, durations, and frequencies are to be determined on an individual basis subject to approval by the Public Works Director.
- (i) No statement contained in this article shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment. (Passed 2-14-17.)

923.20 WASTEWATER FACILITY DAMAGE.

No person(s) shall maliciously, intentionally, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is part of the wastewater facilities. Any person(s) violating this provision shall be subject to the penalties provided for in Section 923.99. (Passed 2-14-17.)

923.21 CONTROL MANHOLE.

Where required by the City, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure, or control manhole, with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of wastes. Such structure shall be accessible and safely located, and shall be constructed in accordance with plans approved by the City. The structure shall be installed by the owner at his expense and shall be maintained by the owner to be safe and accessible at all times. (Passed 12-14-17.)

923.99 PENALTY.

Whoever violates any provision of this article shall be fined not to exceed five hundred dollars (\$500.00), or imprisoned not to exceed thirty days, or both. (Ord. 7-11-61.)

**ARTICLE 927
Sewer Rates**

| | | | |
|---------------|------------------------------|---------------|---------------------------------|
| 927.01 | Rates established. | 927.05 | Nonuse of metered water. |
| 927.02 | Date of payment. | 927.06 | Special charges. |
| 927.03 | Tap-in fee. | 927.07 | Collection by Board. |
| 927.04 | Air conditioning use. | 927.08 | Legal proceedings; lien. |
| | | 927.09 | Swimming pool exemption. |

CROSS REFERENCES

Power to collect charges- see W. Va. Code 8-12-5(32), 16-13-16
 Review of Public Service Commission- see W. Va. Code 24-2-4(b)
 Deposit limitations- see W. Va. Code 24-3-8
 Sanitary Board - see ADM. Art. 149
 Water and sewage leak rate adjustment policy- see S.U. & P.S. 933.02

927.01 RATES ESTABLISHED.

SCHEDULE I

(a) The Ordinance of the City of Benwood regulating the rates and charges it prescribes for sewage service shall be amended and altered, effective forty-five (45) days after passage of this section (January 28, 2020) to read as follows:

APPLICABILITY

Applicable in the entire territory served.

AVAILABILITY OF SERVICE

Available for residential, commercial, industrial (except for unusual industrial waste), public authority and sale for resale sewer service.

- (I) RATES (Based upon the metered amount of water supplied)
 First 2,000 gallons used per month \$14.50 per 1,000 gallons
 All Over 2,000 gallons used per month \$14.50 per 1,000 gallons
- (I) MINIMUM CHARGE (Customers with metered water supply)
 Each customer shall pay a minimum charge of \$29.00 per month
 (Equivalent to 2,000 gallons of water usage)
- (I) FLAT RATE CHARGE (Customers with non-metered water supply)
 Each customer shall pay a minimum charge of \$58.00 per month
 (Equivalent to 4,000 gallons of water usage)

(b) Effective July 1, 2020, the rates and charges the City of Benwood prescribes for sewage service shall be further amended and altered, to read as follows:

APPLICABILITY

Applicable in the entire territory served.

AVAILABILITY OF SERVICE

Available for residential, commercial, industrial (except for unusual industrial waste), public authority and sale for resale sewer service.

- (I) RATES (Based upon the metered amount of water supplied)
 First 2,000 gallons used per month \$15.40 per 1,000 gallons
 All Over 2,000 gallons used per month \$15.40 per 1,000 gallons
- (I) MINIMUM CHARGE (Customers with metered water supply)
 Each customer shall pay a minimum charge of \$30.80 per month
 (Equivalent to 2,000 gallons of water usage)
- (I) FLAT RATE CHARGE (Customers with non-metered water supply)
 Each customer shall pay a minimum charge of \$61.60 per month
 (Equivalent to 4,000 gallons of water usage)

(c) Effective May 1, 2021, the rates and charges the City of Benwood prescribes for sewage service shall be further amended and altered, to read as follows:

APPLICABILITY

Applicable in the entire territory served.

AVAILABILITY OF SERVICE

Available for residential, commercial, industrial (except for unusual industrial waste), public authority and sale for resale sewer service.

- (I) RATES (Based upon the metered amount of water supplied)
 First 2,000 gallons used per month \$16.32 per 1,000 gallons
 All Over 2,000 gallons used per month \$16.32 per 1,000 gallons
- (I) MINIMUM CHARGE (Customers with metered water supply)
 Each customer shall pay a minimum charge of \$32.64 per month
 (Equivalent to 2,000 gallons of water usage)
- (I) FLAT RATE CHARGE (Customers with non-metered water supply)
 Each customer shall pay a minimum charge of \$65.28 per month
 (Equivalent to 4,000 gallons of water usage)

(d) Effective forty-five days after passage of this section (January 28, 2020) and applicable at all times set forth herein the charges and terms of the Ordinance regulating the City of Benwood's sewage service shall read as follows:

DELAYED PAYMENT PENALTY

The above schedule is net. On all current billings not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

SEWER SERVICE CONNECTION CHARGE \$500.00

The following charges are to be made whenever the utility installs a new tap to serve an applicant:

A tap fee of \$100.00 will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of \$500.00, or the actual cost of the connection (solely determined by the Utility), will be charged to customers applying for service outside a certificate proceeding before the Public Service Commission for each new tap to the system.

RETURNED CHECK CHARGE

A service charge equal to that charged the utility will be imposed upon any customer whose check for payment of charges is returned by the bank for any reason.

DISCONNECT CHARGE

Service shall not be restored until all amounts in arrears, including penalties, plus a disconnect charge of \$50.00 have been paid.

TAP INSPECTION FEE

The tap inspection fee shall be \$50.00.

INCREMENTAL COSTS

An amount not to exceed \$5.00 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical usage. The Utility shall establish a non-discriminatory policy regarding this provision for leak adjustments.

EFT, ACH, CREDIT CARD AND DROP BOX PAYMENTS

A service charge will be imposed on EFT, ACH, Credit Card or Drop Box payments. The amount shall be equal to the actual charges to the utility from the financial institution for processing payment.

SECURITY DEPOSIT

As of the date of passage, the applicable provision of WV Code 16-13-16:

"The governing body, but only one of them, may collect from all new applicants for service a deposit of \$50 or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure payment of water and sewage service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, service may not be reconnected or reinstated by the governing body until another deposit equal to \$50 or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the governing body. After twelve months of prompt payment history, the governing body shall return the deposit to the customer or

credit the customer's account with interest at a rate set by the Public Service Commission: Provided, That where the customer is a tenant, the governing body is not required to return the deposit until the time the tenant discontinues service with the governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after they become due, the user of the services and facilities provided is delinquent. The user is liable until all rates, fees and charges are fully paid. The governing body may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water service to a delinquent user of sewer facilities ten days after the sewer services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments: Provided, however, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the governing body to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill."

As of the date of passage, the applicable provision of PSC Sewer Rules, Rule 4.2.a.1:

"For a municipal sewer system only, the deposit shall not be more than either fifty dollars (\$50) or two-twelfths (2/12) of the average annual usage of the applicant's specific customer class, whichever is greater"

This tariff in accordance with the above-cited statutory language and a Public Service Commission rules produces a security deposit of \$50.00 for residential customers. All other classes of customers will have their required deposit calculated in accordance with the above language in regards to average usage. (Ord. 1-28-2020.)

SCHEDULE 2
(Effective December 1, 2016)

SURCHARGE FORMULA TO BE APPLIED IN CASES WHERE SURFACE DRAINAGE IS CONNECTED TO THE UTILITY'S SANITARY SYSTEM

Whenever the utility has discovered that a customer's roof drain, downspouts, storm sewer, or other similar facilities conducting surface water has been connected to the utility's sewer system and such customer has failed to take appropriate action within 30 days of receipt of a demand by the utility, in accordance with the Rules and Regulations of the Public Service Commission to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times .0006233 \times C$$

S = The surcharge in dollars.

A = The area under roof and/or the area of any other water collection surface connected to the sanitary sewer, in square feet.

R = The measured monthly rainfall, in inches.

.0006233 = A conversion factor to change inches of rain x square feet of surface to thousands of gallons of water.

C = The utility's approved rate per thousand gallons of metered water usage.

The utility shall not impose the surcharge unless and until the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke test, dye testing, or on-site inspection that rain or other surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within 30 days from receipt of such notice to divert the water from the sanitary sewer system.

Said surcharge shall be calculated and imposed for each month that said condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules and Regulations of the Public Service Commission of West Virginia.

SCHEDULE 3
(Effective December 1, 2016)

SURCHARGE FORMULA TO BE APPLIED TO A CUSTOMER PRODUCING UNUSUAL WASTE

The charge for the treatment of unusual waste will be calculated on the basis of the following formula:

$$C_i = V_o V_i + B_o B_i + S_o S_i$$

| | | |
|-------|---|--|
| C_i | = | Charge to unusual users per year. |
| V_o | = | Average unit cost of transport and treatment chargeable to volume, in dollars per gallon. |
| V_i | = | Volume of wastewater from unusual users in gallons per year. |
| B_o | = | Average unit cost of treatment, chargeable to Biochemical Oxygen Demand ("BOD") in dollars per pound. |
| B_i | = | Weight of BOD from unusual users in pounds per year. |
| S_o | = | Average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound. |
| S_i | = | Weight of total solids from unusual users in pounds per year. |

When an unusual user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgment of the utility, should not be introduced into the sewer system need not be handled by it. The results of this preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefore, based upon the formula set out above.

Thereafter, unusual sewage service will be monitored on a regular basis and at the conclusion of each fiscal year, based on the investigation aforesaid and audit of the utility's records, new cost figures will be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the unusual user. Based on these audited figures, additional billings covering the past fiscal year will be made for payment by each unusual user, or refund given by the utility, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment will be made as aforesaid.

SCHEDULE 4
(Effective December 1, 2016)

APPLICABLE INSIDE AND OUTSIDE OF THE LIMITS OF THE UTILITY

Where the amount of sanitary sewage discharged into the utility's wastewater collection and/or transmission and/or treatment system by certain industrial plant or plants cannot be accurately determined by the use of the plant's water meter or meters, and said plant cannot install a flow meter to measure such waste, a special formula will be used whereby such plant or plants will pay to the Utility a sewer charge calculated at fifty (50) gallons of water per each employee at the plant each working day.

SCHEDULE 5
(Effective December 1, 2016)

APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY

Available for wastewater and leachate haulers.

RATES

Commodity Charge - Each customer shall pay a commodity charge of \$50.00 per 1,000 gallons per load. Load will be the actual capacity of the truck or other transport method delivering wastewater and leachate. Actual capacity shall be determined, or verified solely, by the Utility.

DELAYED PAYMENT PENALTY

The above schedule is net. On all current usage billings not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

RETURNED CHECK CHARGE

A service charge of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank for any reason. (Passed 5-24-16)

927.02 DATE OF PAYMENT.

All bills shall be due on the fifteenth day of every month and if not paid on or before the due date, a ten percent (10%) penalty will be added to such overdue bills.
(Ord. 9-17-81.)

927.03 TAP-IN FEE.

A tapping charge of two hundred dollars (\$200.00) shall be collected from each new tap after the system is in operation.
(Ord. 9-17-81.)

927.04 AIR CONDITIONING USE.

Water used exclusively for air conditioning purposes which is not afterwards disposed of by discharge into the sewer system, cesspools or septic tanks, shall not be subject to the service charge or the disposal charge. But except as to water used exclusively for air conditioning purposes each person, firm and corporation shall have his public and private water supply metered and shall pay the charges herein above mentioned.
(Ord. 9-17-81.)

927.05 NONUSE OF METERED WATER.

In the event a building or premises discharging sewage, water or other liquid wastes into the sewer system uses water supplied on other than a metered basis from the City or from any other source of water supply, the owner or occupant shall be required to cause a water meter to be installed but pending such installation the sewer service rates and charges to such building or premises shall be at least equivalent to the average water bill based on the above rates and charges in the previous year of similar buildings or premises with similar occupancy which are served by the City. (Ord. 9-17-81.)

927.06 SPECIAL CHARGES.

In the event the sewage, water or other liquid wastes being discharged into the sewer system from any building or premises is determined by the City to contain unduly high concentrations or any substances which add to the operating costs of the sewage system of the City then the City may establish special rates or charges as to such class of buildings or premises, or the City may require the owner or other interested party to specially treat such sewage, water or other liquid wastes before they are discharged into the sewer system.
(Ord. 9-17-81.)

927.07 COLLECTION BY BOARD.

All bills for sewer service shall be billed and collected for and on behalf of the City and its Sanitary Board by the Municipal Water Board in accordance with the water meter user records of the Water Board and pursuant to an agreement between the City and the Water Board covering billing and collection. All moneys as collected shall be remitted to the Sanitary Board of the City. No free services of the sewer system shall be allowed or permitted.
(Ord.9-17-81.)

927.08 LEGAL PROCEEDINGS; LIEN.

Responsive to West Virginia Code 16-13-16, the rates or charges for the use of and service rendered by the sewer system shall be paid by or on behalf of the owner of each and every lot, parcel of real estate or building connected with, served by or using the sewer system, and the amount of all such rates or charges, if not paid when due, shall be a lien upon the premises served by such system, and if the bill for such rates or charges is not paid within thirty days after due it shall be deemed delinquent and the amount thereof shall be recovered by the Sanitary Board of the City in a civil action in the name of the City, together with the penalty aforesaid and the lien procured in connection with any such action shall be foreclosed in due course against the lot, parcel of land or building charged with the amount due. Provided, however, if any of the meter user records of the City are in the name of a party other than the owner of the lot, parcel of real estate or building connected with, served by or using the sewer system, and consequently the bill for sewer service rates or charges shall be directed to such party, then in the event any such bill shall not be paid within the allotted time and shall become delinquent, the Sanitary Board shall mail such delinquent bill to the owner of such lot, parcel of real estate or building at the last known address of such owner, together with a notice that such owner is the party charged by law

with the liability for the payment of same, and if such bill is not paid within thirty days after such mailing the amount thereof shall be recovered by the Sanitary Board, together with the penalty aforesaid, as in the case of other delinquent bills and the lien procured in connection with any such action shall be foreclosed in due course against the lot, parcel of land or building charged with the amount due. (Ord. 9-17-81)

927.09 SWIMMING POOL EXEMPTION.

(a) Customers of the Benwood Municipal sewage system who possess a swimming pool requiring in excess of 2,500 gallons of water to fill and that does not drain in any manner into the municipal sewage system may contact the City to obtain an exemption from payment of sewage service charges for the amount of water used to fill the pool.

(b) To qualify customers must contact the Clerk of the City of Benwood prior to filling the pool so the City of Benwood Water and Sewer Department may confirm the amount of water used to fill the pool.

(c) Customers shall only be able to avail themselves of this exemption one time per calendar year. Furthermore, customers shall only be entitled to this exemption if they are otherwise in compliance with Article 923 et seq., of the Codified Ordinances of the City of Benwood and are current with their water and sewage bills. (Ord. 9-24-19.)

**ARTICLE 933
Water Rates**

933.01 Water rates.

**933.02 Water and sewage leak rate
adjustment policy.**

CROSS REFERENCES

Power to collect- see W. Va. Code 8-12-5(32); Art. 8-19
Discontinuance for nonpayment- see W. Va. Code 8-19-13
Review by Public Service Commission- see W. Va. Code 24-2-4(b)
Deposit limitations- see W. Va. Code 24-3-8

933.01 WATER RATES.

The rates for water service in the City are as follows:

- (a) APPLICABILITY. Applicable in the entire area served.
- (b) AVAILABILITY OF SERVICE. Available for general domestic, commercial, industrial service and resale water service.
- (c) RATES. (Customers with metered water supply).

| | | |
|-----------|-------------------------------|--------------------------|
| First: | 25,000 gallons used per month | \$7.00 per 1,000 gallons |
| All over: | 25,000 gallons used per month | \$4.40 per 1,000 gallons |

- (d) MINIMUM CHARGE. No minimum bill will be rendered for less than \$10.50 per month which is the equivalent of 1,500 gallons.

| <u>Meter (inches)</u> | | <u>Equivalent Gallons</u> |
|-----------------------|---------|---------------------------|
| 5/8 | \$10.50 | 1,500 |
| 3/4 | 15.75 | 2,250 |
| 1 | 26.25 | 3,750 |
| 1-1/2 | 52.50 | 7,500 |
| 2 | 84.00 | 12,000 |
| 3 | 157.50 | 22,500 |
| 4 | 262.50 | 44,886 |
| 6 | 525.00 | 104,545 |
| 8 | 840.00 | 176,136 |

- (e) LATEST PAY DATE. The latest pay date shall be the last date, which shall be no sooner than the 20th day following the date the utility mails the bill, that the bill may be paid without incurring a late payment penalty. Such date must be stated on the face of the bill.
- (f) DELINQUENT BILL. Any bill issued by the City that is not paid within thirty days of the bill due date shall be considered a delinquent bill. Said date must be stated on the face of the bill. (Ord. 4-26-05.)
- (g) RETURNED CHECKS CHARGE. A service charge of twenty-five dollars (\$25.00) or the actual fee imposed on the City by its bank, whichever is less, will be imposed upon any customer whose check for payment of charges is returned by their bank for any reason. (Ord. 6-28-05.)
- (h) DELAYED PAYMENT PENALTY. The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.
- (i) DEPOSIT FOR WATER UTILITY SERVICE. A deposit of fifty dollars (\$50.00) will be required for new water utility service and a fifty-dollar (\$50.00) deposit will be required for new sewage utility service prior to these utilities services being connected.
- (j) WATER DISCONNECT-RECONNECT-ADMINISTRATION. \$50.00 Whenever water service has been disconnected for any reason, a disconnection fee of fifty dollars (\$50.00) shall be charged; or in the event the delinquent sewer bill is collected in the field, an administrative fee of fifty dollars (\$50.00) shall be charged. Whenever water service which has been previously disconnected for any reason is reconnected, a reconnection fee of fifty dollars (\$50.00) shall be charged.
- (k) TAP FEE. \$350.00 The following charges are to be made whenever the utility installs a new tap to serve an applicant.
A tap fee of one hundred dollars (\$100.00) will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This re-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.
A tap fee of three hundred fifty dollars (\$350.00) will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.
- (l) LEAK ADJUSTMENT. Two dollars and fifty cents (\$2.50) per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

- (m) **LEAKS ON THE CUSTOMER'S SIDE OF THE METER.** The City shall develop and implement a written policy concerning the adjustment of customer bills where the bill reflects unusual usage which can be attributed to leakage on the customer's side of the meter. Leaking commodes, dripping faucets, malfunctioning appliances and similar situations shall not constitute leaks which entitle the customer to a recalculated bill. The policy shall be maintained in the City Clerk's office for inspection by the public and shall be applied in a non-discriminatory manner to all customers. The reasonableness of the utility's policy or practice with respect to a policy shall be subject to Commission review in a formal complaint proceeding. (Ord. 4-26-05.)

933.02 WATER AND SEWAGE LEAK RATE ADJUSTMENT POLICY.

(a) Adoption. The City hereinafter adopts the following policy to be entitled "The City of Benwood Water and Sewage Leak Rate Adjustment Policy."

(b) Conditions for Applying for Adjustment of Bill. Where the bill of a customer of the City's Water and Sewer Department reflects unusually high usage which can be attributed to leaking on the customer's side of the water meter, said customer may apply for an adjustment of their water and sewage bill.

(c) Exceptions. There shall be no leak adjustment for leaking commodes, dripping faucets, malfunctioning appliances, and similar situations. Furthermore, leak adjustments shall be given for no more than one month for each incident of unusually high water usage.

(d) Recalculation of Bills. Should Council determine that a leak adjustment is appropriate, it shall recalculate the customer's bill for all amounts above the customer's historic usage at the rate of \$2.50 per 1,000 gallons of water and one dollar and seventy cents (\$1.70) per 1,000 gallons of sewage. The customer's historic usage shall be defined as the average usage of the customer over the preceding twelve months or the customer's actual period of service, if less than twelve months.

(e) Credit for Water not in Sanitary Sewer System. Any amounts of water which the customer can prove did not enter the sanitary sewer system shall be credited at full tariff rates.

(f) Application to Council for Leak Rate Adjustment. Water and sewer customers feeling that they are entitled to a leak rate adjustment shall apply to Council within thirty days of receiving the bill in question. Said customers must fill out the Water-Sewage Leak Adjustment Request, attached to original Ordinance 8-25-09, in applying to Council for the leak adjustment.

(g) When Adjustment Not Granted. No relief will be granted if the leak has not been repaired. (Ord. 8-25-09.)

ARTICLE 937
Stormwater Management and Surface Water Discharge Control

| | | | |
|---------------|--|---------------|--|
| 937.01 | Definitions. | 937.21 | Drainage system standards. |
| 937.02 | General. | 937.22 | Plan submission and review process. |
| 937.03 | Stormwater service charge. | 937.23 | Maintenance of stormwater facilities. |
| 937.04 | Properties affected by article. | 937.24 | Inspection. |
| 937.05 | Flat rate charges. | 937.25 | Sampling. |
| 937.06 | Land based rate charges. | 937.26 | Testing and monitoring. |
| 937.07 | Billing. | 937.27 | Concealment. |
| 937.08 | Collection. | 937.28 | Acts resulting in violation of Federal Clean Water Act. |
| 937.09 | Use of funds. | 937.29 | Violations. |
| 937.10 | General requirements and prohibitions. | 937.30 | Administrative enforcement powers. |
| 937.11 | Illicit connections. | 937.31 | Nonexclusivity remedies. |
| 937.12 | Outdoor storage areas. | 937.32 | Appeal. |
| 937.13 | Construction sites. | 937.33 | Disclaimer of liability. |
| 937.14 | Discharge of pollutants. | 937.34 | Severability. |
| 937.15 | Discharge in violation of permit. | 937.35 | Industrial or construction activity discharges. |
| 937.16 | Notification of spills. | 937.36 | Notification of spills. |
| 937.17 | Construction. | 937.37 | Adoption of article. |
| 937.18 | Stormwater taps. | | |
| 937.19 | Enforcement. | | |
| 937.20 | Stormwater management and comprehensive drainage plans. | | |

937.01 DEFINITIONS.

Unless the context specifically indicates otherwise, the meaning of the terms used herein shall be as follows:

- (a) "303d/TMDL" are waters that are impaired based upon the Clean Water Act, Section 303(d), 33 U.S.C. § 1313(d) or has an approved Total Maximum Daily Load (TMDL) for contaminants.
- (b) "Best Management Practices (BMPs)" are physical, structural and/or managerial practices that, when used singly or in combination, control site run-off, spillage and leaks, waste disposal and drainage from raw material storage and prevent or reduce the discharge of pollutants directly or indirectly to waters of the state. BMPs may include schedules of activities, prohibition of practices, general good-housekeeping practices, maintenance procedures, design standards, educational activities and treatment requirements.

- (c) "City" is the City of Benwood.
- (d) "City watershed" is that area within the corporate limits of the City of Benwood, and designated areas outside of those limits, over which surface water drains into the City. Designation of areas outside of the corporate limits of the City shall be made by the City Council.
- (e) "Executive Director" is the Public Works Coordinator.
- (f) "Facility" for purposes of this article is a building, structure, installation or construction site in which pollutants are produced and/or generated and/or discharged as a result of a process or processes, conducted within the building, structure or installation.
- (g) "Flat rate charge" is the charge applicable to a single-family dwelling per dwelling unit or other properties if so designated in this ordinance.
- (h) "Footing drain" is a pipe or conduit which is placed around the perimeter of a building foundation or other structures for the purpose of admitting ground water.
- (i) "Illicit connection" means any direct or indirect non-stormwater discharge to a publicly maintained storm drain system which has not been permitted or allowed by the City from the date of enactment of this ordinance.
- (j) "Illicit discharge" means any discharge, surface or subsurface, to a storm drain or into the stormwater collection system that is not composed entirely of stormwater, except discharges pursuant to a NPDES permit, discharges resulting from firefighting activities, and, other discharges exempted in this article.
- (k) "Impervious area" is land area covered by buildings, pavement, gravel or other material that significantly inhibits stormwater from penetrating the soil.
- (l) "Industrial sites" are those sites that contain industrial activities which require NPDES stormwater permits as set forth in 40 CFR 122.26(a)(6) or (b)(14).
- (m) "Multi-unit property" is a residential or commercial property of any size that has located upon the property two or more tenants, at least one of which having no ownership interest in the property.
- (n) "Non-stormwater" is all flows to the stormwater system not defined as stormwater by this Article or as determined by the municipality. This includes, but is not limited to, cooling water, process water, ground water from a purge well and swimming pool discharge.
- (o) "Pervious area" is all land area that is not impervious.
- (p) "Pollutant" means objects including, but not limited to, dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, grease, petroleum products, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, dirt, industrial, municipal and agricultural waste, gasses entrained in water, paints, oil and other automotive fluids, soil rubbish, debris, materials containing fecal coliform, fecal streptococcus, and enterococcus, heavy metals, hazardous wastes, yard waste from commercial landscaping operations, animal waste, materials that result from the process of building, and offensive matter of any kind, which, when discharged to water, cause or contribute to water pollution.
- (q) "Pollution" is the degradation of the physical, thermal, chemical, biological or radioactive properties of the waters of the state and/or the discharge of any pollutant to the waters of the state which will or is likely to create a nuisance or to render such waters harmful, detrimental, or injurious to public health, safety or welfare or to the beneficial use of the water and/or the water environment.

- (r) "Stormwater" is natural precipitation, surface runoff water, ground water discharge, water from operation of the water distribution system, water used in firefighting, runoff from street sweeping, flows from footing drains and all other discharge sources identified in the City's stormwater NPDES permit, except as may be defined as non-stormwater by this article.
- (s) "Stormwater management" is the process of collection, conveyance, storage, treatment and disposal of storm water to ensure control of the magnitude and frequency of runoff to minimize the impact of the runoff upon the water quality of the receiving stream.
- (t) "Stormwater management program" means those activities associated with the management, operation, maintenance and control of storm water and stormwater works, including, but not limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law.
- (u) "Stormwater system" is a stormwater system in its entirety or any integral part thereof used to collect and dispose of storm water and an associated stormwater management program. It includes all facilities, structures, and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet, including, but not limited to, any and all of the following: Inlets, conduits, corals, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, syphons, retention or detention basins, dams, floodwalls, levies, pipes, flood control systems and pumping stations, and associated stormwater management program.
- (v) "User" is a person or entity which is the legal owner or occupant of a property that directly or indirectly contributes stormwater or non-storm water flows to the storm water system, whether within or outside the corporate limits of the City of Benwood. (Ord. 11-13-18.)

937.02 GENERAL.

- (a) This article has been enacted to protect and enhance the water quality of watercourses, water bodies, groundwater and wetlands in and around the City of Benwood in a manner pursuant to and consistent with the Clean Water Act and associated federal and state stormwater regulations.
- (b) The intent of this article is:
 - (1) To control non-stormwater discharges to storm drain systems.
 - (2) To reduce pollutants in stormwater discharges.
 - (3) To control stormwater runoff by providing design, construction and maintenance criteria for permanent and temporary stormwater facilities.
 - (4) To maintain and improve the stormwater collection system in order to protect and improve water quality in the receiving streams.
 - (5) To fully comply with federal and state statutory and regulatory requirements and schedules regarding stormwater management and the water quality of the receiving streams, including prioritization of 303d/TMDL receiving streams.
- (c) This article shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted.

(d) The City of Benwood shall administer, implement and enforce the duties imposed by this article. Said duties may further be delegated to other entities acting in compliance with applicable ordinances. (Ord. 11-13-18.)

937.03 STORMWATER SERVICE CHARGE.

(a) If approved in a future Amendment to this article by City Council, users connected to or draining into the public storm drainage system shall pay an equitable share of the actual cost of the operation, maintenance of, improvements to, and necessary additions to the stormwater system, as well as costs and expenses associated with complying with the City's Stormwater Management Plan in accordance with 40 CFR 122.32 and 47 CSR 10 of the West Virginia Legislative Rules. Therefore, users of the City's storm water system within the City of Benwood and the designated City watershed shall be charged for the use of the storm water system based on the amount of storm water and rate of flow of stormwater which is projected to discharge from the property into the stormwater system.

(b) When applicable, the City shall, by ordinance, set fees which will recover from users the costs for use of the stormwater system by property within and outside the corporate limits of the City and within the City watershed. Such fees will be for purposes set out in subsection (a) above. (Ord. 11-13-18.)

937.04 PROPERTIES AFFECTED BY ARTICLE.

Except as provided in this article, all real property located within the designated City watershed shall be subject to the stormwater service charges regardless of whether privately or publicly owned. (Ord. 11-13-18.)

937.05 FLAT RATE CHARGES.

If approved in a future Amendment to this article by City Council, a monthly service charge for users occupying a single family residential dwelling shall be developed. Council may, from time to time, by ordinance, change these service charges. (Ord. 11-13-18.)

937.06 LAND BASED RATE CHARGES.

(a) If approved in a future Amendment to this Article by City Council, a monthly service charge for properties other than described in the previous section shall be developed. Council may, from time to time, by ordinance, change these service charges.

(b) Service charges for a multi-unit property shall be billed to each individual tenant upon the property. Occupants of a residential dwelling (an apartment) who are serviced by individual meters shall be assessed at the same rate as persons occupying single family dwellings. At the discretion of the property owner, or if the individual tenants do not have individual drinking water service meters, service charges for a multi-unit property may be billed to the property owner. A property owner exercising this choice must complete a written agreement as required by the Executive Director.

(c) The Executive Director shall assign discount credits to properties employing volumetric flow reduction and/or rate of flow reduction practices or facilities. (Ord. 11-13-18.)

937.07 BILLING.

The billing for stormwater service may be combined with the billing for other utility services provided by the City. (Ord. 11-13-18.)

937.08 COLLECTION.

Unpaid stormwater service charges shall constitute just cause for disconnection of water service to the non-paying property. The Executive Director shall ensure sufficient notice of disconnection is issued in the same manner as is provided for in its Tariff for sewer service as approved by the West Virginia Public Service Commission. Water service shall be reactivated only upon full payment of the stormwater service charges or other payment arrangements approved by the Executive Director. In the alternative, the Executive Director may take appropriate legal action to collect unpaid charges. (Ord. 11-13-18.)

937.09 USE OF FUNDS.

All funds collected for stormwater service shall be accounted for separately and shall be used solely for the operation of, maintenance of, improvements to, necessary additions to the stormwater system, and all costs and expenses associated with complying with the regulatory requirements and the City's Stormwater Management Plan, in accordance with 40 CFR 122.32 and 47 WV CSR 10, including the purchase of storm water related equipment and machinery and other capital equipment, the financing of stormwater related projects, and reimbursement of an equitable share of the administrative costs of the stormwater utility. (Ord. 11-13-18.)

937.10 GENERAL REQUIREMENTS AND PROHIBITIONS.

(a) The use of the stormwater collection system shall be the collection and transportation of storm water.

(b) No person shall place or cause to be placed any pollutant into the stormwater system other than stormwater, unless written approval has been granted by the Executive Director. The Executive Director may refuse to grant approval to discharge non-stormwater into the stormwater system for any reason or combination of reasons.

(c) The Benwood City Council shall administer use of the storm water system to all users with the designated City watershed, whether located within or outside City limits.

(d) No person shall cause or permit the introduction of any pollutant into the stormwater system, whether solid, liquid or gaseous, that will cause:

- (1) Chemical reaction, either directly or indirectly with the materials of construction used in the storm water system or that will impair the strength or durability of sewers or structures;
- (2) Mechanical action that will destroy or damage sewers or structures;
- (3) Restriction of the normal maintenance and inspection of sewers;
- (4) Danger to public health and safety or to the environment;
- (5) Conditions that create a public nuisance;
- (6) An oil sheen or unusual color;
- (7) Abnormal demand on the stormwater system capacity; or,
- (8) The stormwater system to violate its NPDES permit or applicable receiving water standards and all other Federal, State, and local regulations.

(e) Any person or entity engaged in activities which will or may result in pollutants entering the storm drain system shall undertake best management practices to reduce such pollutants. Examples of such activities include, but are not limited to, ownership and/or operation of facilities that may be a source of pollutants, such as paved parking lots, gasoline stations, industrial facilities and private roads/streets.

(f) No person shall throw, deposit, leave, maintain or cause to be thrown, deposited, left or maintained any refuse, rubbish, garbage, grease, petroleum products, or other discarded or abandoned objects, articles and accumulations in or upon any street, alley, sidewalk, storm drain inlet, catch basin, conduit or other drainage structures, parking area, or upon any private or public plot of land so that the same might become a pollutant, except where the pollutant is being temporarily stored in properly contained waste receptacles or is part of a well-defined compost system.

(g) No person shall cause or permit any dumpster, solid waste bin or similar container to leak such that any pollutant is discharged into any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structure, or upon any public or private plot of land in the urban watershed.

(h) No person shall discharge the following categories of non-stormwater discharges unless the discharges are dechlorinated to 0.2 ppm or less, pH adjusted, solids removed, and discharged in a manner that does not cause erosion or sediment to be discharged into the MS4 or receiving water:

- (1) Discharges from potable or non-potable water sources,
- (2) Hyper-chlorinated water line flushing,
- (3) Pipeline hydrostatic test water,
- (4) Chlorinated discharges not associated with drinking water shall be dechlorinated to 0.1 ppm.

(i) No person shall use the stormwater system for discharge from any environmental cleanup that is regulated under federal or state law unless approved by the Executive Director. Approval by the Executive Director must be conditioned upon the discharge meeting all criteria for discharge under this chapter. Approval conditions may provide for measures appropriate to prevent harm due to possible exfiltration into the ground adjacent to the system or failure of any pretreatment system for the discharge.
(Ord. 11-13-18.)

937.11 ILLICIT CONNECTIONS.

It is prohibited to establish, use, maintain or continue illicit connections to the municipal stormwater system, or to commence or continue any illicit discharges to the municipal stormwater system. (Ord. 11-13-18.)

937.12 OUTDOOR STORAGE AREAS.

In outdoor areas, no person shall store grease, oil, or other hazardous substances in a manner that will or may result in such substances entering the stormwater system. In outdoor areas, no person shall store motor vehicles, machine parts, or other objects in a manner that may leak grease, oil, or other hazardous substances to the stormwater system. To prevent the discharge of hazardous substances to the stormwater system, the Executive Director may require the installation of a spill containment system. Spill containment systems may consist of a system of dikes, walls, barriers, berms, or other devices as required. No person shall operate a spill containment system such that it allows incompatible liquids to mix and thereby create a hazardous condition. (Ord. 11-13-18.)

937.13 CONSTRUCTION SITES.

Any person performing construction work disturbing greater than or equal to 1.0 acre of ground located in the watershed of the City shall comply with the provisions of this Article and shall provide erosion and sediment controls that effectively prevent discharges of pollutants to a storm drain system. Compliance with the West Virginia Department of Environmental Protection publication, "West Virginia Erosion and Sediment Control Best Management Practice Manual 2006" is the minimum standard to be met at construction sites. The Executive Director may establish and enforce standards and guidelines implementing BMPs designed to provide erosion and sediment control from construction sites. These standards and guidelines shall include, at a minimum:

- (a) Erosion controls through the protection and preservation of the soil at an active construction site to prevent off-site sedimentation.
- (b) Sediment controls to remove sediment from runoff before runoff is discharged from an active construction site.
- (c) Stabilization and structural practices to prevent sedimentation and erosion.
- (d) Stormwater management measures to be installed before, coincident with and upon completion of construction activities. These measures shall be designed to reduce or eliminate pollutants discharged from the site and to promote flood control objectives designated by the Executive Director.
- (e) Construction site housekeeping best management practices, including, but not limited to, equipment maintenance, repair and cleaning, waste management and collection, storage of materials and chemicals, and sanitary facilities.
(Ord. 11-13-18.)

937.14 DISCHARGE OF POLLUTANTS.

Discharges from the following activities will not be considered a source of pollutants to waters of the state when properly managed: water line flushing and other discharges from potable water sources, landscape irrigation and lawn watering, irrigation water, diverted stream flows, rising ground waters, groundwater infiltration to separate storm drains, uncontaminated pumped ground water, foundation and footing drains, roof drains, water from crawl space pumps, residential air conditioning condensation, springs, individual residential and non-profit group car washes, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges or flows from firefighting activities and training.
(Ord. 11-13-18.)

937.15 DISCHARGE IN VIOLATION OF PERMIT.

Any discharge that would cause a violation of a Municipal NPDES Permit and any amendments, revisions or reissuance thereof, either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge, including, but not limited to, the cost of remedial activity, shall be the responsibility of the person(s) causing or responsible for the discharge, and the City shall seek to have such persons defend, indemnify and hold harmless the City in any administrative or judicial enforcement action against the City relating to such discharge as provided by applicable rules of law. (Ord. 11-13-18.)

937.16 NOTIFICATION OF SPILLS.

All persons in charge of a facility or responsible for emergency response for a facility are responsible to train facility personnel, maintain records of such training, and maintain notification procedures to assure that immediate notification is provided to the Executive Director upon becoming aware of any suspected, confirmed or unconfirmed release of material, pollutants or waste creating a risk of discharge into the municipal stormwater system or into a receiving stream. Notifying the Executive Director does not relieve the responsible persons from notifying applicable agencies per federal, state and local laws.
(Ord. 11-13-18.)

937.17 CONSTRUCTION.

(a) Only designated City employees, or parties authorized by the Executive Director may perform construction upon the public facilities of the stormwater system. Public facilities of the system shall include:

- (1) Those facilities that serve two or more properties, including, but not limited to, main pipelines that collect and transmit stormwater from and/or across two or more properties; and,
- (2) All taps or other connections from a private lateral to a public facility of the system.

(b) All public costs and expenses of and incidental to the installation of private storm water facilities, connections to public facilities, and installation of public facilities to facilitate and convey flows from a specific private facility shall be borne by the owner(s) of the private facility. Payment terms for these costs and expenses shall be designated by the Executive Director.

(c) Parties authorized by the Executive Director to perform construction of or upon the public facilities of the storm water system shall comply with the design and construction standards promulgated by the Executive Director. These parties shall allow for inspection of the construction by the Executive Director at all times, and construction shall only occur during normal City working hours. No facility constructed by an authorized party may be covered or connected to a public facility without specific authorization of the Executive Director. This authority shall be granted by the Executive Director upon satisfaction of the announced design and construction standards.

(d) All public facilities shall, upon authorized completion, be property of the City of Benwood.

(e) A party authorized by the Executive Director to perform construction upon the public facilities of the storm water system shall meet the following requirements prior to and throughout construction:

- (1) Compliance with all relevant Federal and State labor, employment and environmental laws; and,
- (2) Compliance with all relevant and applicable state laws regarding government construction contracts, including, but not limited to, WV Code §§5-22-1, et seq., and 21-5A-1, et seq.; and
- (3) Full and active policy coverage as certified by the West Virginia Bureau of Employment Programs, Workers' Compensation Division; and,
- (4) Certification of full compliance with all relevant state and local permitting and tax rules and regulations, including securing of a City Business License; certification of appropriate property rights to perform the construction; and conveyance to the City of appropriate property rights for the completed public facilities.
- (5) Contractor's liability insurance, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Executive Director, which may include commercial general, automobile, umbrella and builders risk policies, naming the City of Benwood as additional insureds. Policies and coverage limits and terms required shall be appropriate to the subject construction and shall be designated by the Executive Director; and,

- (6) A construction bond, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Executive Director, equal to the estimated cost of the construction and for a term equal to the duration of the construction project. At the discretion of the Executive Director, a bonded party may provide a cumulative general construction bond in satisfaction of this requirement; and,
- (7) A repair bond, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Executive Director, in an amount no more than the reasonable estimate of repair costs, as determined by the Executive Director, and for a term of no longer than five years, beginning on the date of substantial project completion. At the discretion of the Executive Director, a bonded party may provide a cumulative general construction bond in satisfaction of this requirement. (Ord. 11-13-18.)

937.18 STORMWATER TAPS.

(a) The Executive Director or a party authorized by the Executive Director will furnish and install stormwater system taps of the size and at the location requested in writing by an applicant upon a form to be provided by the Executive Director for properties adjacent to new storm sewers. The Executive Director may deny a tap application when the requested tap is proposed to an inadequate public facility.

(b) The City may recover from an applicant the actual cost of planning, engineering, or any other direct cost associated with the request for service. (Ord. 11-13-18.)

937.19 ENFORCEMENT.

(a) No person shall construct or maintain any property, residence or business not in compliance with the standards of this article.

(b) The Executive Director and other authorized employees of the City bearing proper credentials and identification shall be permitted, after reasonable notice, to enter upon all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this article.

(c) No person or firm shall fail to provide any report or other information or perform any duty required by this article.

(d) The Executive Director is authorized to take appropriate legal action to require compliance with this article.

(e) The Executive Director is authorized to enforce and collect upon the terms of a construction and/or repair bond in the event of default of the conditions described therein.

(f) If, after reasonable notice, a person fails to comply with this article, the Executive Director may cause the work to be done to obtain compliance and shall charge the cost of that work to the person responsible. The responsible person shall pay in full the charged amount within thirty (30) days of the invoice date, or otherwise make arrangements, acceptable to the Executive Director, for full payment of the invoiced amount.

(g) The Executive Director is authorized to take all steps necessary to immediately halt any discharge of pollutants which reasonably appear to present an imminent danger to the health or welfare of persons or to the environment.

(h) Persons aggrieved by any determination of the Executive Director in enforcing this article may appeal that determination to the Benwood City Council pursuant to Section 937.32. (Ord. 11-13-18.)

937.20 STORMWATER MANAGEMENT AND COMPREHENSIVE DRAINAGE PLANS.

(a) The requirements and standards of this section shall apply to all new developments and redevelopment projects. The intent of these regulations is to minimize the discharge and transport of pollutants to storm drain systems and prevent the deterioration of water quality.

(b) All new developments and redevelopment projects greater than or equal to 1.0 acres including projects less than 1.0 acres that are part of a larger common plan of development or sale within the City watershed shall include stormwater management plans and comprehensive drainage plans as described in this section. These plans shall be subject to the review and approval of the Executive Director.

(c) Agricultural land management activities shall be exempt from the requirements of this section. It shall also be noted that no activity shall be exempt from the management of the discharge of sediment or any other form of water pollution that may leave any parcel or site.

(d) All new development and redevelopment subject to the provisions of this article shall be required to obtain a stormwater permit unless exempted under the provisions of this article. The Executive Director shall issue a stormwater management permit for plans that meet the requirements of this section and any other requirements of this article. No City building permit shall be issued without the submission of a stormwater permit issued under the provisions of this article.

(e) Technical, administrative or procedural matters may be modified by the Executive Director as needed to meet the objectives and policies defined in this article, so long as such modifications are not contrary to or beyond the intent of the objectives and policies included in this article.

(f) Uniform requirements shall be applied to each regulated project site. These requirements shall be based upon the criterion that post development storm water peak runoff rates of flow must not exceed the pre-development peak runoff rates of flow. In redevelopment projects, a peak runoff rate of flow reduction of ten percent (10%) from the preexisting peak runoff rate of flow must be achieved. However, no reduction shall be required beyond the peak runoff rate of flow that would occur from the parcel in its natural, undeveloped state.

(g) Site design for all new and redeveloped properties shall include management measures that keep and manage on site the first one inch of rainfall from a 24-hour storm preceded by 48 hours of no measurable precipitation. This first inch shall be 100% managed on site with no discharge to surface waters except when an alternative approach is approved by the Executive Director, which includes:

- (1) Storm water is treated before release to surface waters via extended or engineered infiltration. Extended filtration practices that are designed to capture and manage up to one inch of rainfall may discharge through an under drain system.
- (2) Provide payment in lieu of onsite retention with funds collected used for stormwater projects only.

(h) Incentives exist for certain types of development can either reduce existing impervious surfaces or at least create less "accessory" impervious surfaces. As such, a reduction of 0.2 inches from the one inch runoff reduction standard shall be applied to any of the following type of development:

- (1) Redevelopment
- (2) Brownfield redevelopment
- (3) High density (> 7 units per acre)
- (4) Vertical density (Floor to Area Ratio (FAR) of 2 or > 18 units per acre)
- (5) Mixed use and transit oriented development (within 1/2 mile of transit)

Reductions are additive up to a maximum of 0.75 inches for a project that meets four or more criteria. In no case shall the reduction be greater than 0.75 inches.

(i) For projects requiring a stormwater permit, plans submitted to the Executive Director shall include the following information:

(1) Descriptive information:

A. Title sheet.

1. Project name.
2. Owner.
3. Design firm.
4. Legend.
5. West Virginia registered professional engineer stamp, signature and date.
6. Vicinity map with North arrow.
7. Scale.
8. Sheet numbers.
9. Date

B. Topographical features:

1. Original contours at intervals no greater than two vertical feet.
2. Existing drainage components, i.e., streams, ponds, pipes, etc.
3. Property boundary lines.
4. Existing streets, buildings, and utilities.
5. 100 year flood plain.
6. Off-site drainage entering site
7. Original drawing either 22 inch x 34 inch or 11 inch x 17 inch and at a scale from 1 inch equals 10 feet to 1 inch equals 50 feet.

C. Site Plan.

1. Existing and proposed structures, roads, buildings, paved areas.
2. Existing and proposed stormwater management system and components including sizes, lengths, pertinent elevations, etc.

3. Where and how proposed stormwater management system will be connected to existing systems.
 4. Location and grade of all swales including a typical cross section.
 5. Location and design of all other Best Management Structures/Implementations.
 6. Sediment and Erosion Control measures are required. Refer to the most current edition of the West Virginia Department of Environmental Protection Sediment and Erosion Control manual for acceptable means and methods.
 7. Existing and proposed ground cover.
 8. Total impervious area
 9. Control release facilities showing cross-sections and profiles
- D. Final as-built drawings:
1. Show location, length, sizes, and pertinent elevations of the stormwater management system.
 2. Failure to provide final as-built drawings within three months of substantial project completion will cause the utility to prepare these drawings. The responsible party shall be charged for this service. The Executive Director may extend this time as deemed necessary.
- (2) Design standards.
- A. Flow rates shall be calculated by use of the Rational Method unless sufficient justification for use of another method is approved by the Executive Director.
 - B. The minimum "time of concentration" to be used in the calculations shall be six (6) minutes.
 - C. Detention volumes shall be calculated using modeling software or an approvable calculation similar to the Abt and Grigg Method. Detention structures shall be designed in such a manner that the post-construction peak runoff rate of flow shall be equal to or less than the pre-construction peak runoff rate of flow for 2-year/24-hour and 50 year/24-hour storms. In redevelopment projects, a peak runoff rate of flow reduction of ten percent (10%) from the pre-existing peak runoff rate of flow must be achieved. However, no reduction shall be required beyond the peak runoff rate of flow that would occur from the parcel in its natural, undeveloped state.
- (3) Design backup. Provide information on the following for review by the Executive Director:
- A. Calculations of volumetric runoff and peak runoff rate of flow for both pre-development and post-development.
 - B. Calculations for storm water detention/retention facility and other system elements.
 - C. Operation and Maintenance information for private stormwater control facilities.
- (4) Sedimentation and erosion control measures are required. Refer to the most current edition of The West Virginia Department of Environmental Protection Sedimentation and Erosion Control Manual for acceptable means and methods.

(j) All development and/or redevelopment projects shall minimize the impact to the water environment by applying structural and/or non-structural management practices selected to address site specific conditions. The minimum requirement for runoff water quality treatment shall be a reduction of 80% of the average post-development total suspended solids and a reduction of forty percent (40%) of the average post-development phosphorus load.

(k) No construction shall be performed in a manner that will negatively impact the water environment in the vicinity of construction or in other areas, regardless of whether this impact is manifested by flow restrictions, increased runoff, diminishing channel or floodplain storage capacity, harm to aquatic life or any other manifestation of negative impact.

(l) New construction or reconstruction shall be permitted only after temporary or permanent erosion and sediment control management practices have been placed and are operational to the satisfaction of the Executive Director. The Executive Director may halt construction, void a permit, or take other enforcement actions consistent with this section upon a finding of inadequate erosion and sediment control management practices upon a site or property subject to the provisions of this section.

(m) All active construction sites shall be inspected by the owner no less than weekly and within twenty-four (24) hours after a 0.25 inch rain event to ensure and verify effective erosion and sediment control. The owner shall maintain records of these inspections. The Executive Director may halt construction on properties that do not provide satisfactory proof of compliance with this requirement.

(n) The owner of a completed new development and/or redevelopment construction shall submit to the Executive Director within thirty (30) days of substantial project completion an "as-built" plan of the stormwater management facilities located upon the property/site.

(o) For redevelopment projects for existing public streets or parking lots that are greater than 5,000 square feet, runoff reduction practices shall be employed.

(p) Fee in Lieu of Stormwater Management Practices. Where approved by the Executive Director, the applicant shall be required to pay a fee in lieu of storm water management practices, in an amount as determined by the Executive Director. This amount shall be approximately equal to the cost of storm water management and based on the cubic feet of storage required for storm water management of the development in question. All of the monetary contributions shall be credited to an appropriate stormwater capital improvements program project, and shall be made by the applicant prior to the issuance of any storm water permit for the development. (Ord. 11-13-18.)

937.21 DRAINAGE SYSTEM STANDARDS.

Drainage systems shall comply with the standards established by ordinance.
(Ord. 11-13-18.)

937.22 PLAN SUBMISSION AND REVIEW PROCESS.

(a) Stormwater management plans and comprehensive drainage plans for any new construction or reconstruction within the city watershed shall be submitted to the executive Director. The plans shall be reviewed by the Executive Director for compliance with the applicable rules and standards. Plans developed to meet federal or state requirements may be submitted, and will be approved if they conform to the requirements of this article.

(b) The plan submission and review process shall be coordinated with and integrated into the City planning and permitting process. No building permit shall be issued without an approved stormwater management plan if required under this article.

(c) To ensure that new development and redevelopment projects greater than or equal to 1.0 acres including projects less than 1.0 acres that are part of a larger common plan of development or sale conform to the long-term stormwater control standards, the City will implement project review, approval and enforcement procedures.

(d) The review, approval and enforcement procedures shall apply to all new development and redevelopment disturbing greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, and shall include the following steps:

- (1) Submit for review and approval a pre-application concept plan that describes how the performance standards will be met.
- (2) Next a pre-application meeting shall be attended by the project land owner or developer, the project design engineer, and municipal planning staff to discuss conceptual designs.
- (3) Dependent upon the scope of the development, plans will be distributed and presented by the planning staff to the Planning Commission and City Council for comments. Any comments received must be addressed by the land owner or developer prior to approval of the plan.
- (4) Once constructed, 'as-built' certifications shall be submitted by the land owner or developer within ninety (90) days of completion of a project.
- (5) Within thirty (30) days of the receipt of the as-built certification, a post-construction verification process will be performed by the City to ensure that stormwater standards are being met. Non-compliance shall be addressed by the methods discussed in Section 937.26.
- (6) Operations and Maintenance data supplied for the project will be used to educate both internal staff and external project proponents of the requirements of long-term stormwater controls.
(Ord. 11-13-18.)

937.23 MAINTENANCE OF STORMWATER FACILITIES.

(a) Private stormwater facilities located in private property and within the City watershed shall be maintained by the owner or other responsible party and shall be repaired and/or replaced by such person when such facilities are no longer functioning as designed.

(b) Disposal of waste from maintenance of private facilities shall be conducted in accordance with applicable federal, state and local laws and regulations.

(c) Records of installation and maintenance and repair shall be retained by the owner or other responsible party for a period of five (5) years and shall be made available to the Executive Director upon request.

(d) The Executive Director may perform corrective or maintenance work, which shall be at the owner's expense, upon any failure to maintain facilities or correct problems with facilities after receiving due reasonable notice from the Executive Director.

(e) Routine maintenance of detention/retention facilities shall be conducted by the owner of the facility in accordance with this article and guidance of the Executive Director.
(Ord. 11-13-18.)

937.24 INSPECTION.

(a) Stormwater systems within the City watershed shall be inspected by the Executive Director during and after construction to assure consistency with the approved stormwater management plan.

(b) All stormwater systems within the City watershed shall be subject to the authority of the Executive Director to ensure compliance with this Article and may be inspected when deemed necessary.

(c) The owner of a private storm water system, or other responsible party designated by the owner, shall make annual inspections of the facilities, including any detention/retention facility, and maintain records of such inspections for a period of five (5) years.

(d) Whenever necessary to make an inspection to enforce any of the provisions of this article, or whenever the Executive Director has reasonable cause to believe that there exists in any building or upon any premises any condition which may constitute a violation of the provisions of this article, the Executive Director may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed by this article; provided that:

- (1) If such building or premises is occupied, he or she first shall present proper credentials and request entry; and
- (2) If such building or premises is unoccupied, he or she first shall make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

(e) The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the Executive Director is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.

(f) Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this article, including but not limited to, random sampling and/or sampling in areas with evidence of stormwater pollution, illicit discharges or similar factors. (Ord. 11-13-18.)

937.25 SAMPLING.

With the consent of the owner or occupant or with Court order, the Executive Director may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Executive Director may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities, provided that owners or occupants shall be entitled to split samples. (Ord. 11-13-18.)

937.26 TESTING AND MONITORING.

(a) Whenever the Executive Director determines that any person engaged in any activity and/or owning or operating any facility may cause or contribute to stormwater pollution or illicit discharges to the stormwater system, the Executive Director may, by written notice, order that such person undertake such monitoring activities and/or analyses and furnish such reports as the Executive Director may require. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order

and shall particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator, including costs of these activities, analyses and reports, shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the Order.

(b) Within twenty (20) days of the date of receipt of the order, the recipient shall respond personally or in writing advising the Executive Director of the recipient's position with respect to the Order's requirements. Thereafter, the recipient shall be given the opportunity to meet with the Executive Director to review the Order's requirements and revise the Order as the Executive Director may deem necessary. Within ten (10) days of such meeting, the Executive Director shall issue a final written order. Final Orders issued pursuant to this Section may be appealed to the Benwood City Council by the filing of a written appeal with the Mayor within ten (10) days of receipt of the final Order. The appeal notice shall set for hearing the particular Order requirements or issues being appealed. The Benwood City Council shall hear the appeal at its earliest practical date and may either affirm, revoke or modify the Order. The decision of the Council shall be final, but may be subject to review by a Court of competent jurisdiction.

(c) In the event the owner or operator of a facility or property fails to conduct the monitoring and/or analyses and furnish the reports required by the Order in the time frames set forth therein the Executive Director may cause such monitoring and/or analyses to occur. If a violation is found, the Executive Director may assess all costs incurred, including reasonable administrative costs and attorney's fees, to the owner or operator. The Executive Director may pursue judicial action to enforce the Order and recover all costs incurred.
(Ord. 11-13-18.)

937.27 CONCEALMENT.

Causing, permitting, aiding, abetting or concealing a violation of any provision of this article shall constitute a violation of such provision.
(Ord. 11-13-18.)

937.28 ACTS RESULTING IN VIOLATION OF FEDERAL CLEAN WATER ACT.

Any person who violates any provision of this article, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the federal Clean Water Act and may be subject to the sanctions of that Act including civil and criminal penalties.
(Ord. 11-13-18.)

937.29 VIOLATIONS.

(a) When the Executive Director finds that a discharge has taken place or is likely to take place in violation of this article, the Executive Director will first provide a verbal warning to the person creating the situation once observed. If unable to provide a verbal warning or if this issue is not addressed in a timely manner, the Executive Director may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall comply with the requirement and comply with a time schedule for compliance. The Executive Director shall provide notice to one in violation of this article by personal notice or certified mail, return receipt requested. Said notice shall state the nature of the violation, the potential penalty, the action required to correct the violation, and the time period within which the corrective action must be taken.

(b) If, after receipt of proper notice, a violator fails to timely make the required corrections, the Executive Director may enter upon the subject property and make said corrections. The costs of correction may be recovered in a civil action brought against the violator on behalf of the City.

(c) In the alternative, and at the discretion of the Benwood City Council and/or the Executive Director, a violator may be assessed a monetary fine, payable to the operating fund of the stormwater utility, in accordance with the following schedule:

- (1) First violation: \$250.00 and notice to correct.
- (2) Second violation and/or failure to correct: \$500.00
- (3) Third violation and/or continued failure to correct: \$1,000.

The Executive Director shall ensure that there is a reasonable time between a notice to correct and a subsequent sanction for failure to correct.

(d) These sanctions may be assessed against any user of the municipal separate storm sewer system within the City watershed. The Municipal Court of the City of Benwood shall be the venue for violations occurring within the City political boundaries. The Marshall County Magistrate Court shall be the venue for violations occurring within the City watershed and outside the political boundaries of the City. (Ord. 11-13-18.)

937.30 ADMINISTRATIVE ENFORCEMENT POWERS.

(a) In addition to the other enforcement powers and remedies established by this article, the Executive Director has the authority to utilize the following administrative remedies.

- (1) Notice to Clean. Whenever the Executive Director finds any oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds or in close proximity to any open drain or ditch channel, which may result in an increase in pollutants entering the storm drain system or a non-stormwater discharge to the storm drain system, he or she may give notice to the property owner to remove and lawfully dispose of such material in any manner that he or she reasonably may provide. The recipient of such notice shall undertake the activities as described in the notice within the time frames set forth therein.
- (2) In the event the owner or operator of a facility fails to conduct the activities as described in the notice, the Executive Director may cause such required activities as described in the notice to be performed, and the cost thereof shall be assessed and invoiced to the owner of the property. If the invoice is not paid within sixty (60) days, a lien shall be placed upon and against the property. (Ord. 11-13-18.)

937.31 NONEXCLUSIVITY REMEDIES.

Remedies under this article are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. (Ord. 11-13-18.)

937.32 APPEAL.

Any person, firm, corporation or organization notified of non-compliance with this article or required to perform monitoring, analyses, reporting and/or corrective activities who is aggrieved by the decision of the Executive Director may appeal such decision in writing within twenty (20) days of the date of receipt of the order to the Benwood City Council by the filing of a written appeal with the Mayor of the City of Benwood within ten (10) days of receipt of the final Order. The appeal notice shall set for hearing the particular Order requirements or issues being appealed. The City Council shall hear the appeal at its earliest practical date and may either affirm, revoke or modify the Order. The decision of the Council shall be final, but may be subject to review by a Court of competent jurisdiction. (Ord. 11-13-18.)

937.33 DISCLAIMER OF LIABILITY.

The degree of protection required by this article is considered reasonable for regulatory purposes. The standards set forth herein are minimum standards and this article does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the State. This article shall not create liability on the part of the City, any agent or employee thereof for any damages that result from reliance on this article or any administrative decision lawfully made thereunder. (Ord. 11-13-18.)

937.34 SEVERABILITY.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence or paragraph of this article or the application thereof to any person, establishment or circumstances shall be held invalid, such invalidity shall not invalidate the other provisions or application of this article. (Ord. 11-13-18.)

937.35 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with this permit may be required in a form acceptable to the City prior to allowing discharges to the stormwater system (Ord. 11-13-18.)

937.36 NOTIFICATION OF SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has any information of any known or suspected release of materials which are or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or waters of the state of West Virginia, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of release. In the case of a release of hazardous material said person shall immediately notify emergency response agencies of the spill. (Ord. 11-13-18.)

937.37 ADOPTION OF ARTICLE.

This article shall be in full force and effect beginning January 1, 2019. All prior ordinances and parts of ordinances in conflict with this article are hereby repealed. (Ord. 11-13-18.)

CHAPTER FIVE - Other Public Services
Art. 951. Refuse Collection.
Art. 957. Park Regulations.

ARTICLE 951
Refuse Collection

- | | | | |
|---------------|--|---------------|--|
| 951.01 | Collection and disposal by City; exceptions. | 951.04 | Frequency of collection. (Repealed) |
| 951.02 | Supervision of collection service; regulations. | 951.05 | Rates. |
| 951.03 | Pre-collection practices and requirements. | 951.06 | Penalty. |

CROSS REFERENCES

- Power to regulate- see W. Va. Code 8-12-5(10) et seq.
- Placing material in streets- see TRAF. 311.01
- Loads dropping or leaking - see TRAF. 34 7. 04

951.01 COLLECTION AND DISPOSAL BY CITY; EXCEPTIONS.

(a) Except as provided otherwise in this article, all refuse accumulated in the City shall be collected, conveyed and disposed of by the City, and no other person shall collect, convey over any of the streets or alleys of the City, or dispose of, any refuse or trash in the City.

(b) This article shall not prohibit the actual producers of refuse, or the owners of the premises upon which refuse has accumulated, from personally collecting, conveying and disposing of such refuse; provided, that such producers or owners comply with the provisions of this article, and that the manner of collection, conveyance and disposal meets with any other governing law or ordinance and the approval of the Street Commissioner and the County Health Officer.

(c) This article shall not prohibit collectors of refuse from outside the City from hauling such refuse over City streets; provided, that such collectors comply with the provisions of this article and meet the approval of the Street Commissioner, County Health Officer and any other governing law or ordinance.

(d) No person shall cast, place, sweep or deposit anywhere within the City any refuse in such a manner that it may be carried or deposited by the elements upon any street, sidewalk, alley, sewer, parkway or other public place, or into any occupied or unoccupied premises within the City. (Ord. 11-22-88.)

(e) Notwithstanding any other provisions of this Article, Council has the authority to contract with a private person or entity to collect refuse accumulated in the City. The contract for said service between the City and the person or entity, will govern the days of collection, the pre-collection practices and requirements, the frequency of collection, as well as the rates for service. (Ord. 9-11-18.)

951.02 SUPERVISION OF COLLECTION SERVICE; REGULATIONS.

The collection, conveyance and disposal of refuse and trash shall be done under the supervision of the Street Commissioner and the County Health Officer. The Street Commissioner with the approval of Council shall make regulations concerning the days of collection, type and location of containers and such other matters pertaining to the collection, conveyance and disposal of refuse and trash as he shall find necessary, and he may change and modify such regulation, with Council's approval, after notice to the public; provided, that such regulations are not contrary to the provisions of this article. (Ord. 11-22-88.)

951.03 PRECOLLECTION PRACTICES AND REQUIREMENTS.

- (a) Garbage, ashes and rubbish shall be placed and maintained in separate containers.
- (b) Preparation of Refuse.
- (1) Garbage.
 - A. All liquids shall be drained before being deposited for collection.
 - B. All garbage will be placed in plastic garbage bags, tied and placed at the appropriate pick up point.
 - (2) Rubbish.
 - A. All rubbish shall be drained of liquids before being deposited for collection.
 - B. Trimmings and clippings. Tree trimmings and hedge clippings and similar materials shall be cut to a length not to exceed four feet and be securely tied in bundles and of such weight for one person to handle.
 - (3) Ashes. Ash containers shall be made of metal or plastic and be of such weight for one man to handle. Similar material such as dirt, plaster, stones, etc., shall also be placed in a similar container, and be of a weight for one person to handle.
- (c) Refuse Containers. The Street Commissioner shall personally contact any one who is not meeting the following conditions to clarify the reason for noncompliance.
- (1) Duty to provide and maintain in sanitary condition. Refuse containers shall be provided by the owner, tenant, lessee or occupant of the premises, and all refuse, except cardboard, newspapers and magazines, trash compactor bags and grass and tree clippings stored between garbage days outdoors must be stored in an approved refuse storage container.

- A. Approved refuse storage containers. Refuse containers used for storage of refuse between collections, except as provided elsewhere in this article, shall have a capacity of not more than thirty-two gallons and shall be made of metal or plastic or rigid durable construction suitable for outside use. The container shall have suitable handles and tight-fitting covers and shall be water tight. The container shall be kept in a neat, clean, sanitary condition at all times. The fill container shall be of such a weight that it can be handled safely by one person. The container may not have ragged edges, sharp edges or other defects liable to hamper or injury the person collecting.
 - B. Cardboard, newspapers, magazines, and trash compactor bags must be stored between collection in a manner so that they remain dry and do not create a nuisance or menace to public health or safety.
 - C. Grass clippings and tree trimmings and similar materials, stored between collections must be stored so as not to create a nuisance or a menace to public health or safety.
- (2) Refuse placed on the right-of-way line or other approved location for collection shall be in containers or bundles as follows:
- A. All types of refuse in an approved refuse storage container.
 - B. All types of refuse except broken glass or heavy or sharp objects in a sealed heavy plastic garbage bag.
 - C. Cardboard shall be crushed or folded and tied in bundles which can be safely handled by one person. Cardboard so bundled need not be in containers but must be secured so as to prevent scattering by wind.
 - D. Newspapers and magazines must be bundled and bound with heavy tape or heavy string. Newspapers and magazines so bundled need not be placed in containers.
 - E. Compacted trash in a heavy trash compactor bag need not be placed in an approved container.
 - F. Grass clippings shall be placed in a sealed plastic garbage bag or other sealed suitable container.
 - G. Tree trimmings, hedge clippings and similar material shall be cut to length not to exceed four feet and securely tied in bundles for collection. Bundles shall be a size which can be handled by one person. Trimmings and clippings so bundled need not be placed in a container.
- (3) Notice of refuse containers in violation. An individual responsible for maintaining the refuse container in a condition which is in violation of this section shall be notified by the Street Commissioner that the container is in a condition so as not to comply with this section and that a repair or replacement is required within two weeks. The Street Commissioner shall have the authority to refuse collection service for failure to comply with the notice after the two week period;
- (4) The Street Commissioner may immediately suspend service when the weight or condition of the container, bag or bundle makes it totally unsafe to handle.

- (5) Points of collection shall be made by City crews from the alley whenever practical. When alley collection is not practical, collection will be from the street. Customers will be required to make refuse accessible to the alley or street where applicable, and efforts will be made to take into consideration the elderly and handicapped.
(Ord. 11-22-88.)

951.04 FREQUENCY OF COLLECTION. (REPEALED)

(EDITOR'S NOTE: Former Section 951.04 was repealed by Ordinance 4-11-95, passed

951.05 RATES.

The following rates are hereby established for collection of refuse or garbage by the City:

- (a) Residential Collection Fees. Residential collection fees shall be established at fourteen dollars (\$15.00) per month per serviced dwelling or residence.
- (b) Commercial or Business Collection Fees. Business or commercial collection fees shall be established as follows:
 - (1) Commercial Users Class 1 - Light Users shall be charged \$32.00 per month.
 - (2) Commercial Users Class 2 - Heavy Users shall be charged \$62.00 per month.
 - (3) Commercial Users Class 1 - Light Users are to be defined as those commercial, business or service customers who are not classified as Class 2 Heavy Users.
 - (4) Commercial Users Class 2 - Heavy Users are to be defined as those commercial, business or service customers dispensing of bottles, cans, boxes, crates or other heavy items in addition to regular refuse.
(Passed 3-22-11; Ord. 8-27-13.)
- (c) Flat Rate Customer Fees. The Flat Rate Customer Fees shall be \$1,935.00 per month. (4-26-11; 4-25-17.)

951.99 PENALTY.

Whoever violates any provision of this article shall be fined up to one hundred dollars (\$100.00) and/or imprisoned for a period not to exceed thirty days.
(Ord. 3-12-91.)

ARTICLE 957
Park Regulations

957.01 Fourth Street City Park.

CROSS REFERENCES
Benwood Skate Park- see TRAF. 311.05(b)

957.01 FOURTH STREET CITY PARK.

(a) General Provisions. Council hereby finds that the property encompassing the Fourth Street City Park shall be subject to a restriction/condition reading as follows: The Council of the City of Benwood hereby understands and agrees to comply with Section 6(f) of the Land and Water Conservation Fund Act of 1965, as amended, (78 Stat. 897) which established by Federal law that:

No property acquired or developed with assistance from the Land and Water Conservation Fund shall, without the written approval of the Secretary of the Department of the Interior, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonable equivalent usefulness and location.

(b) Legal Description. The legal description of the Fourth Street City Park is as follows:

The following parcels of land situate on the northerly side of 4th Street and also the easterly side of the property now owned or occupied by the Pennsylvania Railroad Company, City of Benwood, Union District, Marshall County, West Virginia, and being more particularly bounded and described as follows:

- (1) Parcel One. Beginning at an iron pin, (formerly a concrete monument) in the westerly extension of the northerly line of 4th Street, at its intersection with the easterly line of the property now owned or occupied by the Pennsylvania Railroad Company; thence from said beginning iron pin, and with said Railroad Company property, the following two courses and distances: with a curve to the right, having radius of 957 and 5110 feet, for an arc distance of 136 and 2110 feet, the chord bearing and distance for said arc being N. 10° 41' 13" E. 136 and 8/100 feet to a concrete monument; thence N. 14° 46' 1" E. 148 and 21100 feet to a point; thence leaving said Railroad property and with other property now owned by Consolidation Coal Company, the following three courses and distances: S. 68° 41' 07"

E. 478 and 89/100 feet to a point; thence with a curve to the right, having a radius of 25 feet, for an arc distance of 37 and 611/100 feet, the chord bearing and distance for said arc being S. 25° 37' 30" E. 34 and 16/100 feet to a point; thence S. 1r 28' 30" W. 249 and 8/100 feet to a point in the northerly line of 4th Street; thence with said northerly line and its westerly extension, N. 69° 45' 30" W. 478 and 64/100 feet to the place of beginning, containing by survey made by Stegman and Schellhase, Inc., Civil Engineers and Surveyors, three and one hundred twenty-four thousandths (3 and 124/1000) acres, more or less.

- (2) Parcel Two. Beginning at a point in the northerly line of 4th Street, said beginning point located S. 69° 45' 30" E. 30 and 4/100 feet from the southeast corner of Parcel One (described above); thence with other property now owned by Consolidation Coal Company, the following two bearings and distances: N. 1JD 28' 30" E. 217 and 96/100 feet to a point; thence S. 68° 41' 07" E. 52 and 6110 feet to a point in the westerly right of way line of the McMechen Street ramp leading to State Route No. 2; thence with said right-of-way line, the following four bearings and distances: S. 8° 39' 30" W. 14 and 69/100 feet to an iron pin, 35 feet distant, measured at right angles in a westerly direction from center line station 43 + 00 of said McMechen Street ramp; thence S. 12 o 54' 30" W. 202 and 3/10 feet to an iron pin, 35 feet distant, measured at right angles in a westerly direction from centerline station 40 +97. 70; thence N. 77° 05' 30" W. 27 feet to an iron pin, 62 feet distant, measured at right angles in a westerly direction from centerline station 40 + 97.7; thence S. 19 o 31' 30" W. 52 and 191100 feet to a point in the northerly line of 4th Street, 68 feet distant, measured at right angles in a westerly direction from centerline station 40+46; thence with the northerly line of 4th Street, N. 69° 45' 30" W. 42 and 12/100 to the place of beginning, containing by survey made by Stegman and Schellhase, Inc., Civil Engineers and Surveyors, three hundred sixty-four thousandths (36411000) of an acre, more or less.
- (3) The above described parcels are subject to slope rights along a private road leading from 4th Street in a northerly direction.
The party of the second part, as a part of the consideration hereof, covenants and agrees to and with the party of the first part that this conveyance is upon the express condition that the above parcels will be used for recreational purposes and is to remain in effect only so long as said parcels are so used, and in the event they are used for any other purpose the title to these parcels will revert to the party of the first part or its successors and assigns upon payment by it of the sum of one dollar (\$1. 00) to the party of the second part, together with all the hereditaments and appurtenances thereunto belonging.
The party of the second part further covenants with the party of the first part that it will within one year from the date hereof provide and set up and forever thereafter maintain, at its own cost and expense, in a proper and substantial manner, good and sufficient fencing surrounding the parcels hereinbefore described.
There is except and reserved in this conveyance all of the coal underlying the above described parcels. (Ord. 3-27-07.)