

CODIFIED ORDINANCES OF BENWOOD
PART SEVENTEEN - BUILDING AND HOUSING CODE

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CODIFIED ORDINANCES OF BENWOOD
PART SEVENTEEN - BUILDING AND HOUSING CODE

ARTICLE 1711
Dilapidated Building Repair or Removal

1711.01	Definitions.	1711.04	Notice; hearing; review.
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CROSS REFERENCES

Power to abate nuisances - see W. Va. Code 8-12-5(23)

Building enforcement agency - see BLDG. & HOUS. Art. 1723

1711.01 DEFINITIONS.

When used in this article, "dilapidated building" means any building or structure which for want of repairs, or by reason of age and condition or for any other cause is especially liable to fire, or is a building used for human habitation which lacks essential sanitary facilities and services and endangers the health of the occupants thereof and the health and lives of others, or which may be so situated or constructed so as to endanger other buildings, property or lives.
 (Ord. 6-18-67.)

1711.02 POWERS OF COUNCIL.

Council may require the demolition, condemnation, repair or removal of any dilapidated building found within this City. The authority of Council to order the demolition, condemnation, repair or removal of such dilapidated buildings shall extend to and include property which has become delinquent for taxes or which has been sold to the State or become forfeited to the State by virtue of West Virginia Code Chapter 11A. The notice requirements of this article in such case shall be deemed to have been complied with upon notification given to the person or persons in whose name such property became delinquent.
 (Ord. 6-18-67.)

1711.03 COST OF REMOVAL; RECOVERY OF COSTS.

Council is hereby given the authority to expend such reasonable sum, not to exceed one hundred dollars (\$100.00), per building or structure, as it deems necessary, for the removal or demolition of buildings, structures or property, and it is hereby authorized and directed to recover, where practical, the cost of such removal or demolition from the owners of the property, and is further authorized to institute and maintain in any court of competent jurisdiction, suits for the collection or recovery of the cost of such removal or demolition.
(Ord. 6-18-67.)

1711.04 NOTICE; HEARING; REVIEW.

Whenever Council finds, after investigation, that any building or structure constitutes a dilapidated building within the meaning of this article, it shall immediately so notify the owner of such finding. The required notice shall advise the owner of the findings, including:

- (a) The date of the inspection.
- (b) The description, nature and condition of the building or structure, including its location.
- (c) The nature and extent of repairs necessary to restore such dilapidated building to an acceptable condition.
- (d) Any other information deemed pertinent.
- (e) That such repairs must be made within thirty days from the date of such notice, or such building must be demolished and removed.

In the event the repairs set forth in the notice have not been completed within thirty days from the date of the notice so given, or unless the building has been demolished and removed, or unless the owner has requested a hearing as hereinafter provided, Council may proceed to order the demolition and removal of such dilapidated building.

In the event the owner or his personal representative desires a hearing on the matter, such owner or personal representative may request such hearing before Council. Such request for hearing shall be made in writing and unless made within thirty days from the date of Council's notice, Council's order to demolish shall not thereafter be subject to judicial review.

Where the owner of such building or structure is a minor, incompetent, convicted felon or other person under similar disability, or a decedent's estate, the notice required by this article shall be given to such owner's guardian, committee, curator or other personal representative, either in person or by publication as hereinafter required.

Where the identity of such owner, guardian, committee, curator or other personal representative is unknown or is not easily ascertainable, or is a non-resident, or where the last known owner is a deceased person and the identity of the heirs of such deceased person are unknown or are not readily ascertainable the notice required by this article shall be given by publication made once a week for two successive weeks in some newspaper of general circulation in the county wherein such dilapidated building is located.

(Ord. 6-18-67.)

1711.05 INJUNCTIVE AND OTHER RELIEF.

Council may authorize the application to any court of competent jurisdiction, for injunction or other relief to enforce any order of Council made by virtue of this article.
(Ord. 6-18-67.)

1711.99 PENALTY.

No owner, or other person, having charge of any dilapidated building shall fail or refuse to comply with the order of Council requiring the repair or demolition of such building, within the time specified in this article, and any owner or person who fails or refuses to repair or remove the building shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than ten days, or both.
(Ord. 6-18-67.)

**ARTICLE 1718
Vacant Structure Code**

1718.01 Purpose.	1718.09 Amending information.
1718.02 Definitions.	1718.10 Reinspection.
1718.03 Criteria.	1718.11 Non-payment of fees/liens.
1718.04 Applicability.	1718.12 Related to other codes and laws.
1718.05 Inspection.	1718.13 Severability.
1718.06 Corrective action.	
1718.07 Registration generally.	

1718.01 PURPOSE.

(a) The City has determined that an uninspected and unmonitored vacant building may present a fire hazard, may provide temporary occupancy by transients (including drug users and traffickers), may detract from private and/or public efforts to rehabilitate or maintain surrounding buildings, and that the health, safety and welfare of the public is served by the regulation of such vacant buildings.

(b) Owners of uninspected and unmonitored vacant buildings shall register such vacant buildings with the City, make payment of a fee for the registration thereof, and otherwise conform to these vacant building regulations.

(c) This article ensures that, through a registration, inspection, and monitoring process, vacant buildings will be kept weather tight and secure from trespassers, will provide safe entry to police officers and firefighters in times of emergency, will not impede private and/or public efforts to rehabilitate or maintain surrounding buildings, and will not present otherwise a public hazard.

(d) The City, by and through its departments (particularly the Code Enforcement Office and Building Enforcement Agency) shall inspect and monitor vacant buildings shall assess the effects of the condition of those buildings on nearby structures, and shall promote substantial efforts to rehabilitate and develop such buildings when appropriate.

These provisions will streamline and consolidate the existing procedure (that is, complaint, research, notification, inspection, orders, fines, liens, appeals and due process lien enforcement), by placing the responsibility to register and maintain vacant structures on the building owner before a building's condition falls into disrepair or otherwise merits a complaint.

(Passed 11-14-17.)

1718.02 DEFINITIONS.

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

- (a) **Boarded:** A building or structure subject to the provision of this section shall be deemed to be "boarded" if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or similar material covering the space for such door or window.
- (b) **Exterior Maintenance and Major Systems:** The phrase "exterior maintenance and major systems" shall mean the safe and lawful maintenance of the facade, windows, doors, roof and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, and the sidewalk, driveway, if any, area of the lot, as applicable and as enforced by the Code Enforcement Office and/or Building Enforcement Agency particularly in connection with codes adopted by the City as well as all applicable local, state and federal laws.
- (c) **Occupied:** Any building or structure shall be deemed to be occupied if one or more persons actually conducts a lawful business or resides in all or any part of the building as the licensed business occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, non-transient basis, or any combination of the same. For purposes of this section, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water and sewer services; a valid city business license, or the most recent, federal, state or city income tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy; or proof of bonafide pre-emptive inspection.
- (d) **Open:** A building or structure subject to the provisions of this section shall be deemed to be "open" if any one or more exterior doors other than a storm door is broken, open and/or closed but, without a properly functioning lock to secure it, or if one or more windows is broken or not capable of being locked and secured from intrusion, or any combination of the same.
- (e) **Owner:** An owner of the freehold of the premises or any lesser estate therein, a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a building subject to the provisions of this section, and as set forth below.
- (f) **Vacant:** A building or structure shall be deemed to be vacant if no person or persons actually, currently conducts a lawfully licensed business, or lawfully resides, dwells, or lives in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupant(s), or tenant(s) on a permanent, non-transient basis. A building or structure shall be deemed vacant and subject to the registration and possible penalty provisions provided herein if the exterior maintenance and major systems of the building and the surrounding real property thereof, as defined in this section, are in violation of the building codes or health and sanitation codes and if there is not proof of continual utility service evidencing actual use of electric, gas (i.e., applicable heating sources), water service, etc. Continued is meant to be without more than one thirty (30) day interruption in any given three hundred sixty (360) day period. In order for such continual utility service to be considered as being actually in use as described in this section, it must

be more than merely registered to the owner for purposes of billing and must be utilized, at a minimum, in order to keep the property and the major systems of the building in compliance with building and safety codes. The person or entity asserting that there has been continued utility service has the burden to produce actual bills evidencing utility service for the relevant period. (Passed 11-14-17.)

1718.03 CRITERIA.

All vacant structures shall also comply with the following criteria:

- (a) Exterior property areas are to be mowed regularly and non-cultivated gardens maintained at no more than 17 inches of growth. All noxious weeds are prohibited.
 - (b) Structure is to be broom swept and cleared of all contents, not including building materials or components to be used in the future renovation at that structure.
 - (c) Electrical service is to be provided to the building via temporary pole service on the exterior of the structure or create a permanent service for the structure and install two GFCI protected receptacles.
 - (d) NEC and OSHA compliant string lighting is to be provided to the entire structure so that it may be illuminated as needed to view the structure.
 - (e) Unstable interior and exterior surfaces and components are to be removed. Unstable or unsound accessory buildings are to be razed or renovated.
 - (f) Using wood sheet goods; all loose, deteriorated and broken windows and doors are to be covered to eliminate the danger of their falling and to prevent the unwanted entry of trespassers. Such wood sheet goods are to be cut and neatly fit, not just nailed over the opening.
 - (g) All loose or deteriorated trim, gutter or overhang extensions (masonry or frame) are to be removed or reattached to prevent falling.
 - (h) Regular routine monitoring of the structure is to occur by the owner to ensure that the building is being kept in compliance with the above items.
 - (i) Utilities need to be connected to the structure.
- (Passed 11-14-17.)

1718.04 APPLICABILITY.

The requirements of this section shall be applicable to each owner of any building that is found to be vacant pursuant to the language contained herein. Each such owner shall cause to be filed a notarized registration statement, which shall include the street address and parcel number of each such vacant building, the names and addresses of all owners, as hereinafter described, and any other information deemed necessary by the Code Enforcement Office and/or Building Enforcement Agency. The registration fee(s) as required by this section shall be billed by the City and shall be paid by last day of the month when the property has been registered. For purposes of this section, the following shall also be applicable:

- (a) If the owner is a corporation, the registration statement shall provide the names and residence addresses of all officers and directors of the corporation and shall be accompanied by a copy of the most recent annual franchise tax report filed with the secretary of state;
 - (b) If an estate, the name and business address of the executor of the estate;
 - (c) If a trust, the name and address of all trustees, grantors, and beneficiaries;
 - (d) If a partnership, the names and residence addresses of all partners with an interest of ten percent or greater; If any other form of unincorporated association, the names and residence addresses of all principals with an interest of ten percent or greater;
 - (e) If an individual person, the name and residence address of that individual person.
- (Passed 11-14-17.)

1718.05 INSPECTION.

At the time of registration, the Code Enforcement Officer, Volunteer Fire Chief, Police Chief or their designees shall determine whether it is necessary for any or all of them to inspect the structure so as to identify any public safety issues needing addressed. Inspections shall also be available to verify the status of any property concerning occupancy, vacancy, etc. If an internal inspection is deemed necessary, the owner will be notified of the same and arrangements made for the same. If the owner fails or refuses to consent to and arrange for an inspection, the city will seek an administrative search warrant from a court of competent jurisdiction, which shall include the Municipal Court, to authorize inspection of the premises for the purpose of determining the structural integrity of the building, the repairs necessary to insure its structural integrity and that it will be safe for entry by fire fighters and police officers in time of emergency, and that the building and its contents do not present a hazard to the public during the time that the building remains vacant. (Passed 11-14-17.)

1718.06 CORRECTIVE ACTION.

The property owners shall be notified in writing of any corrective action deemed necessary for life, safety and building code matters by City officials, the applicable code provisions or regulations, and will be afforded a reasonable time to the corrective action. Corrective action concerning the occupancy of vacant structures is discussed later herein. (Passed 11-14-17.)

1718.07 REGISTRATION GENERALLY.

(a) At the time of adoption of this article, all owners of realty within the City of Benwood that contain a vacant structure, as defined above, shall register the same with the City Clerk's Office. For those structures that qualify as a vacant structure and after the adoption of this article, the owner thereof shall be required to register the structure with the City Clerk's Office within 30 days after the structure is found to meet the definition of a vacant structure. The registration form shall require information from the registrant deemed necessary by the Code Enforcement Officer Volunteer Fire Chief and Police Chief of the City, so as to ensure that the purpose of this article is met. Specifically, the above named City officers shall have the authority to require that the property owner provide a professional opinion (architect, engineer, etc.) to determine the structural integrity of the building, the repairs necessary to ensure its structural integrity and that it will be safe for entry by fire fighters and police officers in time of emergency, and that the building and its contents do not present a hazard to the public during the time the building remains vacant. The Code Enforcement Officer shall have authority to issue orders to the owner for corrective action deemed necessary. The Volunteer Fire Chief shall rely upon the West Virginia State Building Code and Fire Code, as well as other applicable law, for guidance during any such structural review.

(b) Registration statement and fees; local agent. If none of the persons listed, as above, is shown at an address within the state, the registration statement also shall provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owners and who shall be designated as a responsible, local party or agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and for purposes of service of any and all notices or registration statements as herein authorized and in connection herewith. Registration shall be required for all vacant buildings, whether vacant and secure, vacant and open or vacant and boarded, and shall be required whenever any building has remained vacant for 45 consecutive days or more. In no instance shall the registration of a vacant building and the payment of registration fees be construed to exonerate the owner, agent or responsible party for compliance with any other building code or housing code

requirement. One registration statement may be filed to include all vacant buildings of the owner so registering, but each structure constitutes a separate fee. The owner of the vacant property as of the last day of the month when the property has been registered of each calendar year shall be responsible for the payment of the non-refundable registration fee. Said fee shall be billed by the City; and based on the duration of the vacancy as determined by the following scale:

- (1) No fee for properties that are vacant for less than one year;
 - (2) \$500.00 for properties that are vacant for at least one year but less than two years;
 - (3) \$1,000.00 for properties that are vacant for at least two years but less than three years;
 - (4) \$2,000.00 for properties that are vacant for at least three years but less than four years;
 - (5) \$3,500.00 for properties that are vacant for at least four years but less than five years; and
 - (6) \$4,000.00 for properties that are vacant for at least five years, plus an additional \$300.00 for each year in excess of five years.
- (Passed 11-14-17.)

1718.08 RIGHT OF APPEAL.

(a) Appeal Rights. The owner shall have the right to appeal the imposition of the registration fees to the Mayor upon filing an application in writing to the City Clerk's Office no later than 15 calendar days after the date of the billing statement. On appeal, the owner shall bear the burden of providing satisfactory objective proof of occupancy as defined in this article specifically.

(b) One Time Waiver of Registration Fee. A one-time waiver of the registration fee, or an extension of a waiver for up to 90 days from the date of the current billing statement, may be granted by the Mayor or his designee upon application of the owner and upon review and advice of the Code Enforcement Officer, Volunteer Fire Chief and Police Chief; if the owner:

- (1) Demonstrates with satisfactory proof to the Mayor or his designee that he/she is in the process of demolition, rehabilitation, or other substantial repair of the vacant building; and
- (2) Objectively demonstrates to the Mayor or his designee a reasonable anticipated length of time for the demolition, rehabilitation, or other substantial repair of the vacant building;
- (3) Provides satisfactory proof to the Mayor or his designee that he/she was actively attempting to sell or lease the property during the vacancy period; or
- (4) Provides satisfactory proof to the Mayor to be evaluated on a case-by-case basis, that the vacancy is temporary and may be due to illness of the owner, active military service, or some other reasonable explanation believed to be short term in nature and document able as necessary.

(c) Within 30 days, or as soon thereafter as possible, after the waiver application is received by the Mayor or his designee shall grant or deny the waiver, or request for extension, in writing, and dispatch the written decision by mail to the owner. If the owner properly submitted an application for a one-time waiver or request for extension to the Mayor or his designee, and the Mayor or his designee rendered a decision which the owner seeks to appeal to the City Council, the owner must file an application in writing no later than 30 calendar days from the date of the Mayor or his designee's decision. City Council shall either grant or deny the appeal. Thereafter the decision of City Council is final unless within thirty (30) days of such decision the owner appeals for injunctive relief to the Circuit Court of Marshall County.

(Passed 11-14-17.)

1718.09 AMENDING INFORMATION.

(a) Duty to Amend Registration Statement. If the status of the registration information changes during the course of any calendar year, it is the responsibility of the owner, responsible party or agent for the same to contact the department of licenses and inspections with 30 days of the occurrence of such change and advise the department in writing of those changes.

(b) Exceptions. This section shall not apply to any building owned by the United States, the state, the City, or any of their respective agencies or political subdivisions.

(c) Violations and Penalties for Failure to Register. The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to register a vacant building upon adoption of this section or to pay any fees required to be paid pursuant to the provisions of this section, within thirty days after they become due, shall constitute a violation punishable upon conviction thereof by a fine in the amount of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each failure or refusal to pay a required vacant building fee, as applicable. In such cases, whenever the minimum fine of one hundred dollars (\$100.00) is imposed, it shall not be subject to suspension or reduction for any reason. (Passed 11-14-17.)

1718.10 REINSPECTION.

All vacant structures are subject to reinspection on an annual basis or as deemed necessary pursuant to Section 1718.04.
(Passed 11-14-17.)

1718.11 NON-PAYMENT OF FEES/LIENS.

(a) Delinquent Registration Fees as a Lien. After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected an appeal pursuant to Section 1718.08, and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the City and the City may commence a civil action to collect such unpaid debt.

(b) "Lien" or "liens" as used in this section shall arise whenever the fees and charges as described in this section are levied or imposed.

(c) If an owner fails to pay the registration fee as assessed and the City begins the collection action to enforce its lien, then the Code Enforcement Officer shall post the written notice on the property and send the written notice to the owner(s) by certified and regular mail.

(d) The City may take action to sell the subject property by means of forfeiture and the court ordered enforcement process to collect the debt owed the City. Should the City take the steps necessary to sell the subject property, the City shall do so, subject to all liens and real and personal property taxes that are due. Purchasers of the subject property shall be similarly responsible for registration pursuant to this section in the same manner as the prior owner and must begin the registration process anew if said property remains vacant.
(Passed 11-14-17.)

1718.12 RELATED TO OTHER CODES AND LAWS.

It is to be understood that the intent and purpose of this Article are separate and distinct from other parts and sections of the codified Ordinances of the city of Benwood and the general laws of the State of West Virginia which may also be applicable. The provisions of this section are applicable to the owners of such vacant buildings as set forth herein and are in addition to and not in lieu of any and all other applicable provision of this chapter, the health and sanitation code, and any other applicable provisions of the City Code.

(Passed 11-14-17.)

1718.13 SEVERABILITY.

The provisions of this Article 1718 are severable. If any part of this Article 1718 is held to be invalid by a court of jurisdiction, the remaining provisions of this Chapter and of this Article 1718 shall remain in full force and effect.

(Passed 11-14-17.)

ARTICLE 1723
Building Enforcement Agency

1723.01	Established.	1723.13	Sanitation facilities.
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1723.04	Issuance of notice.	1723.16	Structural elements.
1723.05	Restriction on occupancy.	1723.17	Outside screens.
1723.06	Right to hearing.	1723.18	Window protection from rodents.
1723.07	Appeal for injunction.	1723.19	Responsibilities of owners, operators and occupants.
1723.08	Publication of notice.	1723.99	Penalty.
1723.09	Service of notice.		
1723.10	Agency to repair or remove.		
1723.11	Costs and expenses; lien.		
1723.12	Definitions.		

CROSS REFERENCES

Building enforcement agency - see W. Va. Code 8-12-16

1723.01 ESTABLISHED.

There is hereby created a Building Enforcement Agency, which shall consist of the Mayor and two members at large who shall be residents of the City, and appointed by the Mayor with the advice and consent of Council for a term of three years. The City Health Officer and the Chief of the Fire Department shall serve as ex-officio members of the Agency.
(Ord. 9-11-73.)

1723.02 POWERS AND DUTIES.

The Building Enforcement Agency shall have the power and authority to require the repair, closing or demolition of any dwelling or any other building situated in the City, which is unfit for human habitation or unsafe for human occupancy; lacks of electricity, water supply, sanitation facilities, adequate light, ventilation, or heating systems; is entirely or in part so damaged, decayed, dilapidated, unsanitary, unsafe or vermin infested that it creates a hazard to the health or safety of the occupants or the public; contains unsafe equipment, including any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or in the structure that presents a hazard to the life, health, property or safety of the occupants or the public; is vacant and unoccupied for the purpose for which it was built and has remained substantially in that condition for at least one year and has been cited for five or more violations, none of which have been remedied; or is a public nuisance.
(Ord. 3-22-05.)

1723.03 RIGHT OF ENTRY.

The Building Enforcement Agency shall have the right and authority, through either its members or duly authorized agents, to enter any dwelling or building for the purpose of making any inspection or examination that may be necessary in order for the Agency to determine whether such dwelling or building is unfit for human habitation, unsafe, unsanitary, dangerous or detrimental to the public welfare. However, any entrance upon premises for the purpose of making an examination or inspection shall be made in such manner as to cause the least possible inconvenience to the persons in possession. (Ord. 9-11-73.)

1723.04 ISSUANCE OF NOTICE.

If, after proper investigation and such hearing as the Building Enforcement Agency may deem necessary, the Agency determines that a dwelling or building, or portion thereof, is unfit for human habitation, unsafe, unsanitary, dangerous or detrimental to the public welfare, the Agency shall cause notice to be issued, and served on the owner or person in charge of such dwelling or building, advising him of the Agency's findings, and instructing him to take such action, either by repairing, closing or demolishing such dwelling or building, as the Agency deems necessary in the interest of public welfare. (Ord. 9-11-73.)

1723.05 RESTRICTION ON OCCUPANCY.

If the Building Enforcement Agency so prescribes, no dwelling or building shall be occupied or used for any purpose after the service of a notice upon the owner or person in charge thereof until the instructions of the Building Enforcement Agency have been complied with, rescinded, or set aside. The Building Enforcement Agency shall also cause to be posted upon the aforementioned property a sign designating that the property is subject to a notice of condemnation. This sign must not be removed until the Building Enforcement Agency or its designee authorizes its removal. (Ord. 3-22-05.)

1323.06 RIGHT TO HEARING.

Any person upon whom a notice is served shall have the right, within ten days from the date of service, to demand a hearing before the Building Enforcement Agency. Such hearing, at which the owner or other person shall have the right to be heard in full and to introduce such pertinent evidence and testimony as he desires, shall be held within five days after the receipt of a written demand therefor by the Building Enforcement Agency. The decision of the Building Enforcement Agency, affirming, rescinding, altering or modifying its original finding, shall be handed down within ten days after the termination of the hearing. (Ord. 9-11-73.)

1723.07 APPEAL FOR INJUNCTION.

Any owner or person in charge of a dwelling or building also shall have the right, within ten days after the service of a notice, to appeal to the Circuit Court of Marshall County for a temporary injunction restraining the Building Enforcement Agency from taking any action pending final disposition of the cause. Hearings shall be had by the Court within twenty days, or as soon thereafter as possible, to enter such final order or decree as law and justice may require. Costs shall be imposed at the discretion of the Court. (Ord. 9-11-73.)

1723.08 PUBLICATION OF NOTICE.

If the owner or person in charge of any dwelling or building is not a resident of the State, or is unknown, the notice required by Section 1723.04 shall be published, once a week for three successive weeks, in a local newspaper of general circulation. The service thereof shall be complete upon the third publication. A copy of such notice shall be sent to such owner or other person, by registered mail, at his last known address. (Ord. 9-11-73.)

1723.09 SERVICE OF NOTICE.

All notices and orders issued by the Building Enforcement Agency shall be served in accordance with the law of the State, and shall, in addition thereto, be posted in a conspicuous place on the premises affected by the notice or order.
(Ord. 9-11-73.)

1723.10 AGENCY TO REPAIR OR REMOVE.

In the event of the failure of an owner or person in charge of any dwelling or building to comply with the terms and requirements of any notice or order of the Building Enforcement Agency, within twenty days after the service or entry thereof, except where a proper request has been made for a hearing and the matters arising thereon remain undetermined, or within twenty days after the dissolution of any injunction that may be granted, the Building Enforcement Agency may cause all necessary repairs, alterations or improvements to be made, or, if the public welfare requires, may cause the dwelling or building to be closed, removed or demolished. However, the Building Enforcement Agency may extend the period for compliance with the terms and requirements of any notice which it may issue or order which it may enter, upon receipt of written request from the owner or person in charge of any building or dwelling and proper showing by such owner or other person that he is unable, because of circumstances over which he has no control, to comply with the terms and requirements of such notice or order within such twenty day period. (Ord. 9-11-73.)

1723.11 COSTS AND EXPENSES; LIEN.

All costs and expenses incurred by the Building Enforcement Agency in making necessary repairs, alterations or improvements to a building or dwelling, or in closing, removing or demolishing a building or dwelling, shall be borne by the City. A statement of such costs and expenses shall be transmitted by the Building Enforcement Agency to Council, which shall cause the same, after crediting the proceeds of the sale of salvaged materials to the owner or person in charge of the building or dwelling, to be assessed against the real estate upon which such dwelling or building is, or was, located. Such assessment shall constitute a lien against such property, and a transcript thereof, duly certified and acknowledged by the Mayor, shall be recorded in the office of the Clerk of the Court of Marshall County, West Virginia. Such lien may be enforced by an appropriate suit or proceeding, in the name of the City of Benwood, in the Circuit Court of Marshall County, West Virginia.
(Ord. 9-11-73.)

1723.12 DEFINITIONS.

For the purposes of Sections 1723.13 to 1723.19, the following terms, phrases, words and their derivations, shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (a) "Adequate means of egress" means every habitable room shall be provided with two or more means of egress, either two doors or a door and an openable window. The openable window portion of the window shall be so located and of a sufficient size as to permit safe egress of persons in case of an emergency.

- (b) "Basement" means a story partly below ground of which one-half or more of the clear floor to ceiling is above the average level of the adjoining ground.
- (c) "Cellar" means a story of which more than one-half the clear floor to ceiling height is below the average level of the adjoining ground. No cellar shall be used as a dwelling unit.
- (d) "Dwelling" means a building or structure, except temporary housing, which is wholly or partly used or intended to be used for living or sleeping by human occupants.
- (e) "Dwelling unit" means a room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.
- (f) "Habitable room" means a room of enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, pantries, foyers, closets, storage spaces or connecting corridors.
- (g) "Garbage" means animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food. Refer to sanitary facilities in Section 1723.13(c).
- (h) "Infestation" means the presence, within or around a dwelling, of any insects, rodents or other pests. Refer to restrictions under structural elements in Sections 1723.16(b) and (c) and 1723.18.
- (i) "Multi-family dwelling" means any dwelling or part thereof containing three or more dwelling units.
- (j) "Occupant" means any person including an owner or operator living and sleeping in a dwelling unit or rooming unit.
- (k) "Openable area" means the part of a window or door which is available for unobstructed ventilation and which opens directly to the outdoors.
- (l) "Operator" means any person having charge, care, management or control of any dwelling or part of it, in which dwelling units or rooming units are let.
- (m) "Owner" means any person who, alone, jointly or severally with others, holds legal or equitable title to any dwelling, rooming house, dwelling unit or rooming unit.
- (n) "Plumbing" means water-heating facilities, water pipes, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catch basins, drains, vents and other similar supplied fixtures, together with all connections to water or sewer lines.
- (o) "Plumbing Code" means the State Plumbing Code.
- (p) "Rooming house" means any dwelling or that part thereof containing one or more rooming units, in which space is let to five or more persons.
- (q) "Rooming unit" means any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.
- (r) "Rubbish" means household waste material other than garbage, such as ashes, cinders, paper, building material, etc. Refer to sanitary facilities in Section 1723.13(c).

- (s) "Supplied" means installed, furnished or provided by the owner or operator at his expense.
- (t) "Two-family dwelling" means any dwelling containing two-dwelling units.
(Ord. 9-11-73)

1723.13 SANITATION FACILITIES.

No person shall occupy as owner-occupant or shall let to another for occupancy any dwelling, rooming house, dwelling unit or rooming unit which does not comply with the following minimum standards for basic equipment and facilities:

- (a) Dwelling Units. Every dwelling unit shall contain a room, separate from the habitable rooms, which affords privacy and which is equipped with a flush water closet, lavatory basin and bathtub or shower. Every dwelling unit shall contain a kitchen sink.
- (b) Water Line Connections. Every kitchen sink, lavatory basin and bathtub or shower shall be connected with both hot and cold water lines. The hot water lines shall be connected with supplied water-heating facilities capable of heating an adequate amount of water for use at every kitchen sink, lavatory basin, bathtub or shower, to a minimum temperature of 120 degrees Fahrenheit. All plumbing fixtures shall be installed and all plumbing work shall be done according to the requirements of the State Plumbing Code.
- (c) Every dwelling unit shall have adequate garbage and rubbish storage or disposal facilities as required by applicable City ordinances.
- (d) Rooming House, Hotel or Motel: Additional Sanitation Standards. Every rooming house, hotel or motel shall be equipped with at least one flush water closet, one lavatory basin and one bathtub or shower for each six persons, or fraction thereof living within the rooming house, hotel or motel, including members of the family of the owner or operator if they share the use of facilities. In a rooming house, hotel or motel in which rooms are let only to male occupants, flush urinals may be substituted for not more than one-half of the required number of water closets. No such facilities located in the basement or cellar shall count in computing the number of facilities required by this subsection, except when approved by the Building Inspector.
 - (1) Every flush water closet, flush urinal, lavatory basin, and bathtub or shower, shall be located within the rooming house, hotel or motel, in a room or rooms which afford privacy and are separate from the habitable rooms and are accessible from a common hall and without going outside the rooming house, hotel or motel.
 - (2) The operator of every rooming house, hotel or motel shall supply and change bed linens and towels at least once each week and prior to the letting of a room to any occupant. The operator shall maintain all supplied bedding, bed linens and towels in a clean and sanitary condition.
(Ord. 9-11-73.)

1723.14 VENTILATION, LIGHT AND HEATING.

No person shall occupy as owner-occupant or shall let to another for occupancy any dwelling, rooming house, dwelling unit or rooming unit which does not comply with the following standards for ventilation, light and heating:

(a) Windows and Openable Space.

- (1) Every habitable room shall have at least one window which can be easily opened and which faces directly to the outdoors. The minimum total window area of every habitable room shall be ten percent (10%) of the floor area of such room. The total of openable window area for each habitable room shall be equal to at least forty-five percent (45%) of the required window area. Adequate alternative methods of providing light and ventilation may be used instead of window openings if approved by the Building Inspector.
- (2) Every bathroom and water closet compartment shall comply with window requirements for light and ventilation of habitable rooms, as set out in subsection (a)(1) hereof, however, an approved mechanical or gravity ventilation system affording adequate ventilation may be provided if approved by the Building Inspector.
- (3) Whenever a window of a room faces a wall or other portion, or any abutting structure which is located less than three feet from the window and extends to a level above the ceiling of the room, the window shall not be counted in calculating window area or openable area.
- (4) Every public hall and stairway in every multi-family dwelling and rooming house shall be adequately ventilated.

(b) Lighting. Every dwelling shall be supplied with electricity as follows:

- (1) Every habitable room except those used only for sleeping shall contain at least two separate floor or wall type electric convenience outlets or one such convenience outlet and one supplied ceiling electric light fixture.
- (2) Every sleeping room, water closet compartment, bathroom, hall, furnace room and laundry room shall contain at least one wall type or one supplied ceiling electric light fixture.
- (3) Every public hall and stairway in every two-family dwelling, multi-family dwelling and rooming house shall be adequately lighted at all times except that in a two-family dwelling an adequate lighting system which may be turned on when needed by conveniently located light switches shall be permitted instead of a full-time lighting system.
- (4) Every electrical outlet shall be properly installed and maintained in good and safe working condition, according to the provisions the Building Code.

(c) Heating. Every dwelling shall have heating facilities which are capable of safely and adequately heating all habitable rooms, bathrooms and water closet compartments in every dwelling unit to a minimum temperature of seventy degrees Fahrenheit. Such heating facilities shall be properly installed and vented and maintained in safe operating condition.

(Ord. 9-11-73.)

1723.15 SPACE AND OCCUPANCY.

No person shall occupy or let to another for occupancy any dwelling, rooming house, dwelling unit or rooming unit which does not comply with the following minimum standards for space and occupancy:

- (a) Habitable Floor Area. Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant and at least 100 additional square feet of floor space for every additional occupant. A person under one year of age shall not be counted as an occupant.
- (b) Sleeping Rooms. Every room occupied for sleeping purposes by one occupant shall contain at least seventy square feet of floor area. Every room occupied for sleeping purposes by more than one occupant shall have a minimum of fifty square feet of floor area for each additional occupant in excess of one occupant. Every room occupied for sleeping purposes by more than one occupant, in addition to the minimum light and ventilation requirement of Section 1723.14, shall have five square feet of additional window area and 2.2 square feet of additional openable window area for each additional occupant in excess of one occupant. Effective mechanical means for providing ventilation may be substituted for openable window area if approved by the Building Inspector.
- (c) Ceiling Height of Habitable Rooms. At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven feet. The floor area of that part of any room where the ceiling height is less than five feet shall not be considered as part of the required floor area.
- (d) Basement as Dwelling Unit. No basement shall be used as a habitable room or dwelling unit or rooming unit unless:
 - (1) The floor and wall shall be impervious to leakage of underground and surface run-off water and are well drained and protected against dampness.
 - (2) The total of window area in each room is equal to at least ten percent (10%) of the floor area of the room as measured between stops and is entirely above the grade of ground adjoining such window area.
 - (3) The total openable window area of each habitable room is forty-five percent (45%) of the required window area.
 - (4) It is separated from central heating equipment, incinerators or other equally hazardous equipment by a standard partition.
 - (5) Access can be gained to the unit without passage through a furnace room.
(Ord. 9-11-73)

1723.16 STRUCTURAL ELEMENTS.

No person shall occupy as owner-occupant or shall let to another for occupancy any dwelling, rooming house, dwelling unit or rooming unit which does not comply with the following minimum standards for safe and sanitary maintenance:

- (a) Every foundation, floor, exterior wall, ceiling and roof shall be substantially weather tight, water tight and rodent-proof, shall be kept in sound condition and good repair, and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon.
- (b) Every floor, interior wall and ceiling shall be substantially rodent-proof, shall be kept in sound condition and good repair, and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon.

- (c) Every window, exterior door and basement or cellar door and hatchway shall be substantially weather tight, water tight and rodent-proof and shall be kept in sound working condition and good repair.
- (d) Every inside and outside stair, porch and any appurtenance thereto shall be safe to use and capable of supporting the load that normal use may cause to be placed thereon, and shall be kept in sound condition and good repair.
- (e) Every water closet compartment floor surface and bathroom floor surface shall be constructed and maintained so as to be substantially impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition.
- (f) Every supplied facility, piece of equipment or utility which is required under this Building Code and every chimney and smokepipe shall be so constructed and installed so that it will function safely and effectively, and shall be maintained in sound working condition.
(Ord. 9-11-73.)

1723.17 OUTSIDE SCREENS.

During that portion of each year when the City-County Health Officer deems it necessary for protection against mosquitoes, flies and other insects, every outside door of a dwelling, rooming house, dwelling unit or rooming unit shall be supplied with a screen door and a self-closing device. Every outside window or other outside device used for ventilation shall not be provided in rooms deemed by the City-County Health Officer to be located high enough in upper stories of buildings as to render such screening unnecessary.
(Ord. 9-11-73.)

1723.18 WINDOW PROTECTION FROM RODENTS.

Every basement or cellar window used for ventilation and every other opening to a basement or cellar which is not provided with a door or other closure, and which might provide an entry for rodents, shall be barred with a screen or such other device as will prevent such entry.
(Ord. 9-11-73.)

1723.19 RESPONSIBILITIES OF OWNERS, OPERATORS AND OCCUPANTS.

- (a) Every owner or owner-occupant shall be responsible for the cleanliness of all parts of the dwelling and premises shared in common by more than one family and, except where such responsibility is assumed by an operator or an occupant by agreement, for provision of the following utilities and services:
 - (1) Provision of garbage and trash disposal facilities or containers where the number of dwelling units in a dwelling exceeds two.
 - (2) Extermination of insects, rodents or other pests, except that if there are two or more dwelling units in a dwelling and one dwelling unit is infested, the occupant of such infested dwelling unit shall be responsible for its extermination, unless the dwelling is not maintained in a reasonable rat-proof or insect-proof condition.
 - (3) Provision of adequate draining facilities for stagnant water on any part of the premises outside of the dwelling unit.
 - (4) Provisions of all other facilities, utilities, service or conditions required by this Building Code.

- (b) Every operator of a hotel, motel, rooming or boarding house shall be responsible for the maintenance of all walls, floors and ceilings, and for the maintenance of a sanitary condition in every other part of the hotel, motel, rooming or boarding house and premises. The operator shall be responsible for the sanitary maintenance of the entire premises where the entire structure or building is leased, owned or occupied by the operator. The operator shall be further responsible for the maintenance, cleanliness, extermination, good operating condition and provision of facilities, in the portion of the building being operated as a rooming house, except where such facilities or services are provided by the owner, in which case the operator shall be responsible for their maintenance in clean and good operating condition.
- (c) Every occupant of a dwelling unit or rooming unit shall be responsible for the following as applied to that dwelling unit or rooming unit which he occupies and controls:
- (1) To keep occupied area and premises and all plumbing equipment and facilities in a clean, safe and sanitary condition at all times.
 - (2) To dispose of rubbish and garbage or store such wastes in proper containers and in a neat and sanitary manner, and to provide such disposal or storage facilities as are not required and provided under subsection (a)(1) hereof.
 - (3) To install all screens and screen doors provided.
 - (4) To provide and install window screens not furnished by the owner when required by the City-County Health Officer.
(Ord.9-11-73.)

1723.99 PENALTY.

Any person who, having failed to request a hearing or apply for an injunction as provided in Sections 1723.06 and 1723.07, respectively, knowingly fails to comply with any notice issued by the Building Enforcement Agency, or any person who fails to comply with any order entered by the Building Enforcement Agency, shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both.
(Ord. 9-11-73.)

ARTICLE 1729
Excavation and Sewer Permits

1729.01	Permit required.	1729.05	Emergency permits.
1729.02	Application.	1729.06	Payment into General Fund.
1729.03	Approval of permit; fee.	1729.99	Penalty.
1729.04	Inspections.		

CROSS REFERENCES

Power to regulate street excavations - see W. Va. Code 8-12-5(2)
Sewer connections - see S.U. & P.S. Art. 923

1729.01 PERMIT REQUIRED.

No person, firm or corporation shall dig or otherwise open a hole in any street or alley or tap into any public sewer within the corporate limits of the City without first obtaining a permit from the Clerk-Treasurer of the City.
(Ord. 12-23-58.)

1729.02 APPLICATION.

Any person, firm or corporation desiring to dig or otherwise open a hole in any street or alley or to tap into any public sewer, within the corporate limits of the City, shall file a written application with the Clerk-Treasurer setting forth the following information:

- (a) Name of applicant.
- (b) Kind of work and reason for same.
- (c) Exact location of proposed work.
- (d) Length of time the work is to continue.
- (e) In the event the work of the applicant is to dig or otherwise open a hole in any street or alley of the City, such application shall contain a certificate to the effect that the applicant will restore such street or alley to its original condition subject to the inspection and approval by the Street Commissioner of the City.
(Ord. 12-23-58.)
- (f) The name and address of any contractor performing the work in question. In addition, said contractor, or if no contractor, the applicant must provide proof that they are insured in an amount up to two hundred thousand dollars (\$200,000) and that said insurance names the City as an additional insured during the course of the work in question. (Ord. 3-11-03.)

1729.03 APPROVAL OF PERMIT; FEE.

Upon the receipt of any application pursuant to the provisions of this article, the Clerk-Treasurer shall present the same to Council at the next regular meeting thereof for its consideration. If the application is approved by a majority of Council, the Clerk-Treasurer shall issue a permit to the applicant upon payment of a fee according to the following fee schedule: (Ord. 6-6-82.)

	<u>Fee</u>
(a) For excavating or otherwise opening a hole in any street, alley, sidewalk or other property of the City	\$300.00 plus any other applicable permits and/or fees.
(b) For tapping into any public sewer, for each sewer tap.	(See Article 927.)

(Ord. 6-6-82; Ord. 3-11-03.)

1729.04 INSPECTIONS.

Upon the issuance of any permit pursuant to the provisions of this article, the Clerk-Treasurer shall notify the Street Commissioner of same, who shall inspect the work from time to time, report his findings to Council and keep a record of all work done under this article. (Ord. 12-23-58.)

1729.05 EMERGENCY PERMITS.

In the event of an emergency, the Clerk-Treasurer may issue any permit provided for in this article without the approval of Council, and any person, firm or corporation to whom an emergency permit is issued shall make payment of the charges provided for in Section 1729.03 within five days thereafter. (Ord. 12-23-58.)

1729.06 PAYMENT INTO GENERAL FUND.

All money collected pursuant to the provisions of this article shall be paid into and used as a part of the General Fund of the City. (Ord. 12-23-58.)

1729.99 PENALTY.

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

ARTICLE 1735
Building Permits and Fees

1735.01 Building permits and fees.

1735.99 Penalty.

CROSS REFERENCES

Building permits - see W. Va. Code 8-12-14

Inspections - see W. Va. Code 8-12-15

1735.01 BUILDING PERMITS AND FEES.

There is hereby enacted a building fee for the City which fee shall be paid to the Clerk-Treasurer prior to the issuance of any building or zoning permit. Such fee shall be paid in accordance with the following provisions:

- (a) Any person desiring to construct any structure, dwelling, building or fence or alter the construction of any existing structure, dwelling, building or fence in the City shall first make application to the Clerk-Treasurer for a building permit, or in lieu thereof, to any building or code enforcement officer which the City may hereafter appoint for such purpose.
- (b) Structure shall be defined as any combination of materials constructed or erected for use, occupancy or ornamentation the use of which requires permanent or temporary location on, above or below the surface of the ground or water. By definition, all buildings are structures but not all structures are buildings.
- (c) Such application shall be on a form designated by the Clerk-Treasurer or any building or code enforcement officer hereinafter appointed. Such form shall set forth the information as to the type of construction and square footage and costs of such construction, repair or alteration.
- (d) Each application for a building permit shall be made at least three days prior to commencement of any construction, repair or alteration for which a permit is required. Provided that those persons seeking a building permit for general maintenance in the amount of five hundred dollars (\$500.00) or less will not be required to wait the aforementioned three-day period.
- (e) Building permit fees are hereby established as follows:

<u>Valuation</u>	<u>Fee</u>
\$0 to 500.00	2.00
501 to 1,000	4.00
1,001 to 2,000	5.00
2,001 to 3,000	6.00
3,001 to 4,000	7.00
4,001 to 5,000	8.00
5,001 to 6,000	9.00
6,001 to 7,000	10.00
7,001 to 8,000	11.00
8,001 to 9,000	12.00
9,001 to 10,000	13.00
10,001 to 11,000	14.00
11,001 to 12,000	15.00
12,001 to 13,000	16.00
13,001 to 14,000	17.00
14,001 to 15,000	18.00
15,001 to 20,000	25.00
20,001 to 30,000	35.00
30,001 to 40,000	45.00
40,001 to 50,000	55.00
50,001 to 60,000	65.00
60,001 to 70,000	75.00
70,001 to 80,000	85.00
80,001 to 90,000	95.00
90,001 to 100,000	105.00
100,001 to 200,000	300.00
200,001 to 300,000	400.00
300,001 to 400,000	500.00
400,001 to 500,000	600.00

<u>Valuation</u> (Cont.)	<u>Fee</u> (Cont.)
500,001 to 600,000	700.00
600,001 to 700,000	800.00
700,001 to 800,000	900.00
800,001 to 900,000	1,000.00
900,001 to 1,000,000	1,100.00

For building projects valued at \$1,000,001 and above, the building permit fee shall be determined by multiplying the value of the property by .001. (Ord. 6-10-14.)

(f) The provisions of this article shall be in addition to any requirements of the Zoning Ordinance of the City and any other ordinance specifying requirements for construction or excavation. (Ord. 6-10-14; Ord. 2-24-15.)

1735.99 PENALTY.

Whoever violates any provision of this article shall be fined not more than five hundred dollars (\$500.00) and/or imprisoned not more than thirty days. (Ord. 6-27-89.)

ARTICLE 1741
West Virginia State Building Code

1741.01 Adoption.
1741.02 Definitions.

1741.03 Conflicts.

CROSS REFERENCES

Adoption by reference - see W. Va. Code 8-11-4
Building regulation - see W. Va. Code 8-12-13
State Building Code - see W. Va. Code 29-3-5b

1741.01 ADOPTION.

(a) There is hereby adopted and incorporated by reference as if set out at length herein for the purpose of safeguarding life and property and to ensure the quality of construction of all structures erected or removed throughout the Municipality that certain code known as the State Building Code as promulgated by the Fire Marshal under West Virginia Code 29-3-5b.
(Ord. 8-8-89.)

(b) The standards and requirements as set forth and as published by the Building Officials and Code Administrators International, the Council of American Building Officials and the International Code Council, as listed below, and as adopted by the State Fire Marshal shall have the same force and effect as if set forth verbatim in this section:

- The BOCA National Building Code;
- The BOCA National Plumbing Code;
- The BOCA National Mechanical Code;
- The BOCA National Property Maintenance Code;
- The BOCA National Energy Conservation Code;
- The CABO One- and Two-Family Dwelling Code;
- The International Property Maintenance Code 2003.

(Ord. 5-25-04.)

1741.02 DEFINITIONS.

(a) “Building Code” includes all aspects of safe building construction and mechanical operations and all safety aspects related thereto.

(b) “Fire Marshal” means the West Virginia State Marshal and/or his designated representatives.

(c) “State Building Code” means the entire contents of this article and the referenced national codes.

(d) “BOCA” refers to the Building Officials and Code Administrators International, 4051 Flossmoor Road, Country Club Hills, Illinois, 60477-5795.

(e) “CABO” refers to the Council of American Building Officials, 5203 Leesburg Pike, Suite 708, Falls Church, Virginia, 22041.
(Ord. 8-8-89.)

1741.03 CONFLICT.

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

Whenever there arises a conflict between the BOCA National Plumbing Code portion of the State Building Code and the rules of the State Board of Health, the rules of the Board of Health shall take precedence.

Whenever there arises a conflict between the State Building Code and statutory laws of the State of West Virginia, the West Virginia State Code shall take precedence.
(Ord. 8-8-89.)

ARTICLE 1747
Floodplain Regulations

EDITOR'S NOTE: Ordinance 3-13-07 designated the right of way for Water Street can be used for flood control purposes.
Ordinance 5-8-07 designated the right of way for 8th Street can be used for flood control purposes.

<p>1747.01 General provisions.</p> <p>1747.02 Interpretations and definitions.</p> <p>1747.03 Establishment of the floodplain area.</p> <p>1747.04 Utilization of the floodplain area.</p> <p>1747.05 Criteria for building and site plan approval.</p>	<p>1747.06 Specific requirements.</p> <p>1747.07 Administration.</p> <p>1747.08 Appeals and penalties.</p> <p>1747.09 Government actions.</p> <p>1747.10 Severability and municipal liability.</p>
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1747.01 GENERAL PROVISIONS.

- (a) Intent. The intent of this Ordinance is to:
- (1) Promote the general health, welfare, and safety of the community.
 - (2) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
 - (3) Minimize danger to public health and safety by protecting water supply and sanitary sewage disposal in cooperation with the County Sanitarian, and to protect natural drainage.
 - (4) Assure the County Assessor obtains information concerning improvement of real property as required by West Va. State Code 11-3-3A.

- (5) Assure County E-911 addresses are obtained to maintain the currency of established emergency response dispatch systems.
- (6) Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

(b) Abrogation and Greater Restrictions. This Ordinance supersedes any ordinance currently in effect in flood-prone areas. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

(c) Applicability. It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development, new construction, substantial improvement, repair of substantial damage, or the placement or relocation of any structure (including manufactured homes) within Marshall County, unless a permit application has been completed and a permit or certificate of compliance has been obtained from the Floodplain Administrator. In addition, where land partially or fully in the floodplain is to be developed, subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan with elevation data must be submitted to, and approved by, the Floodplain Administrator prior to any development.

Provision of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this Ordinance and the community's need to minimize the hazards and damage resulting from flooding.

(d) Matters Not Provided for Specifically. Where conditions are encountered that are not specifically provided for herein, the Floodplain Administrator shall determine the applicability of the provisions of this Ordinance in accordance with its intent, and shall require the applicant to take appropriate measures pursuant to such determination.
(Ord. 9-24-09.)

1747.02 INTERPRETATIONS AND DEFINITIONS.

(a) Interpretations. For the purpose of this Ordinance, the following interpretations shall apply:

- (1) Words used in the present tense include the future tense.
- (2) The singular includes the plural.
- (3) The plural includes the singular.
- (4) The term "shall" or "will" is always mandatory.
- (5) The word "building" or "structure" shall be construed as if followed by the phrase "or part thereof."
- (6) The word "Ordinance" shall refer to the Floodplain Ordinance.

(b) Definitions. Unless specifically defined below, words and phrases used in this Ordinance shall be interpreted so as to give this Ordinance its most reasonable application.

- (1) Appurtenant Structure. A structure on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. This does not include a gas or liquid storage tank.
- (2) Base flood. The flood, which has been selected to serve as the basis upon which the floodplain management provisions of this and other ordinances have been prepared; for purposes of this Ordinance, the one hundred (100) year flood.
- (3) Basement. Any area of the building having its floor sub grade (below ground level) on all sides.
- (4) Certificate of Compliance. A certification that the entire development, including the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this Ordinance.
- (5) Contractor- West Va. State Code 21-11-3(c). A person who in any capacity for compensation other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is one thousand dollars (\$1,000) or more. "Contractor" includes a construction manager who performs management and counseling services on a construction project for a professional fee.
 - "Contractor" does not include:
 - A. One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;
 - B. A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;
 - C. A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work;
 - D. A pest control operator licensed under the provisions of West Va. Code 19-16A-7 to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars (\$1,000) on property treated for insect pests; or
 - E. A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this section and who employs full time a registered architect licensed to practice in this State or a registered professional engineer licensed to practice in this State. "Contractor" also does not include employees of such corporation, partnership or sole proprietorship.

- (6) Development. Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
- (7) Flood. A general and temporary inundation of normally dry land areas.
- (8) Floodplain.
 - A. A relatively flat or low land area adjoining a river, stream or watercourse which is subject to partial or complete inundation;
 - B. An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.
- (9) Floodplain Administrator. The Code Enforcement Officer of the City of Benwood shall be the Floodplain Administrator. The Floodplain Administrator may also be identified as the Floodplain Manager.
- (10) Floodway. The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point.
- (11) Flood proofing. Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
- (12) Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for unknown factors that may contribute uncertainty to flood heights of any given flood and floodway condition, such as wave action, blockage at stream crossings, and increased runoff from urbanization of the watershed.
- (13) Historic Structure. Any structure that is:
 - A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register,
 - B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district,
 - C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior, or,
 - D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - 1. By an approved state program as determined by the Secretary of the Interior; or,
 - 2. Directly by the Secretary of Interior in states without approved programs.

- (14) Licensed Manufactured Home Dealer. A business licensed to sell Manufactured Homes in the State of West Virginia as set forth in the West Virginia State Code.
- (15) Licensed Manufactured Home Installer. A contractor licensed to install Manufactured Homes in West Virginia as set forth in the West Virginia State Code.
- (16) Licensed Professional Surveyor. Any person licensed by the West Virginia State Board of Examiners of Land Surveyors to engage in the practice of land surveying as defined in West Virginia State Code.
- (17) Lowest Floor. The lowest floor of the lowest enclosed area (including basement). An unfinished enclosure constructed with flood resistant materials as defined in the FEMA Technical Bulletin 2-93 (FIA-TB-2) and usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.
- (18) Manufactured Home. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".
- (19) New Construction. Structures for which the Start of Construction as herein defined commenced on or after August 4, 1988 and including any subsequent improvements to such structures.
- (20) One-Hundred (100) Year Flood. A flood that has one chance in one hundred or a one percent (1%) chance of being equaled or exceeded in any given year.
- (21) Person. Any individual or group of individuals, corporation, partnership, association or other entity, including state and local governments and agencies.
- (22) Practice of Engineering. Any service or creative work, as described in West Virginia State Code Article 13, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems; planning the use of land and water; teaching of advanced engineering subjects, engineering surveys and studies; and the review of construction for the purpose of assuring compliance with drawings and specifications any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Engineering surveys include all survey activities required to support the sound conception planning, design, construction, maintenance and operation of engineered projects.

Any person who practices any branch of the profession of engineering or who, by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to be a registered professional engineer, or by using another title implies that he or she is a registered professional engineer or that he or she is registered under West Virginia State Code, Article 13 or who holds himself or herself out as able to perform, or who performs any engineering service or work or any other service designated by the practitioner which is recognized as engineering, is considered to practice or offer to practice engineering within the meaning and intent of West Virginia State Code Article 13.

- (23) Principally Above Ground. Where at least fifty-one percent (51%) of the actual cash value of a structure, less land value, is above ground.
- (24) Recreational Vehicle. A vehicle which is:
- A. Built on a single chassis;
 - B. 400 square feet or less when measured at the largest horizontal projection;
 - C. Designed to be self-propelled or permanently towable by a light duty truck; and
 - D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (25) Registered Professional Engineer. A person who has been duly registered or licensed as a registered professional engineer by the West Virginia State Board Registration for Professional Engineers as required under West Virginia State Code Article 13 et seq.
- (26) Remedy a Violation. To bring a structure or other development into compliance with the requirements of this Ordinance, or, if full compliance is not possible, to reduce the adverse impacts of the non-compliance to the greatest extent feasible.
- (27) Reasonably Safe from Flooding. Means that during the base flood, water will not damage structures and any subsurface waters related to the base flood will not damage existing or proposed structures.
- (28) Start of Construction. (The definition for start of construction is to be used only when calculating the starting time for expiration of a permit.) The date the permit was issued, including permits for substantial improvement or repair of substantial damage, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Although a permit must be obtained prior to beginning, permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for

a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

- (29) State Coordinating Office. The West Virginia Division of Homeland Security and Emergency Management.
- (30) Stream. As defined in West Virginia State Code 7-1-3U, any watercourse, whether natural or man-made, distinguishable by banks and a bed, regardless of their size, through which water flows continually or intermittently, regardless of its volume.
- (31) Structure. A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.
- (32) Substantial Damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred. Substantial damage also means cumulative flood-related damages sustained by a structure on two separate occasions during a 10 year period for which the cost of repairs at the time of each flood event equals or exceeds twenty-five percent (25%) of the market value of the structure before the damage occurred. See "Substantial Improvement."
- (33) Substantial Improvement. Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the Start of Construction of the improvement.

This term includes structures, which have incurred "substantial damage", as defined herein regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violation of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all Ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific Ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic Places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from Ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

For the purpose of this definition, improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences whether or not that alteration affects the external dimensions of the structure.

- (34) Top of Bank. The lines depicted on the FIRM maps delineating each side of a stream indicate the top of bank. In the field a professional familiar with fluvial geomorphology should document the top of bank. When a professional is not employed the top of the bank will be considered to be the top of the first significant slope landward of the water's edge when it is followed by at least fifty feet of relatively flat land.
- (35) Violation. The failure of any structure or development to be fully compliant with all requirements of this Ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this Ordinance is presumed to be in violation until such time as that documentation is provided.
(Ord. 9-24-09.)

1747.03 ESTABLISHMENT OF THE FLOODPLAIN AREA.

- (a) Identification.
- (1) The identified floodplain area shall be those areas of the City of Benwood which are subject to the one hundred (100) year flood as shown on the Flood Insurance Rate Map (FIRM) and described in the Flood Insurance Study (FIS) prepared for Marshall County by the Federal Emergency Management Agency (FEMA) dated February 19, 1992, or the most recent revision thereof.
- (2) The identified floodplain area shall also be those areas of the City of Benwood which have been identified as flood hazard areas by the City of Benwood by use of historic or other technical data and shown on the Marshall County "Local Flood Hazards Map". These areas shall be designated as appropriate with the level of technical data described below and shall be managed accordingly.
- (b) Descriptions of Floodplain Areas. The identified floodplain shall consist of the following four specific areas:
- (1) The Floodway area (F1) shall be those areas identified as such in the FIS and as shown on the floodway map or FIRM. The term shall also include floodway areas identified in other studies for the approximated area discussed in subsection (b)(4) hereof.
In floodplain areas for which no regulatory floodway has been designated, the regulatory floodway for small, single lot development not incorporating significant amounts of fill can, at the discretion of the community, be considered to be the channel of the stream and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the top of the bank nearest the site to the upland limit of the 100 year floodplain boundary.
- (2) The Floodway Fringe area (F2) shall be those areas for which specific one hundred (100) year flood elevations have been provided in the FIS but which lie beyond the floodway area.
- (3) The AE Area without Floodway (F3) shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which 100-year flood elevations have been provided but no Floodway has been delineated.

- (4) The Approximated area (F4) shall be those areas identified as an A Zone on the FIRM or floodway map included in the FIS prepared by FEMA and for which no one hundred (100) year flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State, or other acceptable source shall be used when available. Where other acceptable information is not available the Floodplain Administrator shall require the applicant to determine the elevation with hydrologic and hydraulic engineering or other techniques. When hydrologic and hydraulic analyses are required, they shall only be undertaken by a registered professional engineer who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.
- (c) Changes in Designation of Area.
- (1) The delineation of the identified floodplain area may be revised by the City of Benwood where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, a River Basin Commission or other qualified agency or individual document the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).
- (2) The City of Benwood may identify and regulate new flood hazard or ponding areas. These areas may be delineated using locally derived technical information such as flood of record, historic high water marks and/or topographic data.
- (d) Elevations Prevail.
- (1) If the lowest natural grade adjacent to proposed development within an identified flood hazard area is at or above the Base Flood Elevation specified in the Flood Insurance Study, the structure shall not be required to conform to the flood prevention design and construction standards or flood-related development codes in Section 1747.06. Topographic data certified by a registered professional engineer or licensed professional surveyor shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator. The applicant is advised to apply for a Letter of Map Amendment (LOMA) from FEMA to have the Special Flood Hazard Area designation removed from the parcel or structure.
- (2) If the lowest natural grade adjacent to proposed development is below the Base Flood Elevation specified in the Flood Insurance Study, the site shall be considered to be within the floodplain area and the proposed structure shall be required to conform to all appropriate provisions of this Ordinance.

(e) Boundary Disputes. Should a dispute concerning any district boundary arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision may appeal to the City of Benwood. The burden of proof shall be on the appellant/applicant. (Ord. 9-24-09.)

1747.04 UTILIZATION OF THE FLOODPLAIN AREA.

(a) Floodway (F1).

- (1) Within any floodway area (F1), no encroachments, including fill, construction substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in the Base Flood Elevation.
- (2) Because floodways present increased risk to human life and property due to their relatively faster and deeper flowing waters the Floodway shall be preserved to the greatest extent possible.
 - A. New development shall not be permitted in the floodway where reasonable alternatives exist elsewhere. In addition to the requirements below the applicant shall demonstrate that there are no reasonable alternatives other than the floodway encroachment before a permit is issued.
 - B. When the floodway is the only reasonable alternative the applicant shall demonstrate that the floodway encroachment is the minimum necessary to accomplish the project.
 - C. All permitted uses, activities, and development shall be undertaken in strict compliance with the flood-proofing and related provisions contained herein, and in all other applicable codes, ordinances and regulations.

(b) Floodway Fringe (F2) and Approximated Floodplain (F4).

- (1) In the Floodway Fringe (F2) and Approximated Floodplain (F4), any development and/or use of land shall be permitted provided that all such uses, activities and/or development shall be undertaken in strict compliance with the flood-proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.
 - A. In the Approximated Floodplain (F4) the Floodplain Manager shall review, or shall cause to be reviewed, all proposed development not covered by subsection (b)(2) below to ascertain the amount being invested and the specific flood risk at the building site and assign a "minimal, moderate or significant" risk level.
 1. Development determined to represent a minimal risk and costing less than ten thousand dollars (\$10,000) shall be required to provide "Point on Boundary" elevation data and historic flood heights. The Floodplain Manager shall attempt to determine a height that will be reasonably safe from flooding using this elevation data. The Floodplain Manager shall enter the flood height in Section "G" of the Elevation Certificate. Any new or

- substantially improved structures permitted using this method (other than appurtenant structures) shall be required to have the lowest floor elevated at least three (3) feet above the highest adjacent grade even if the "point on boundary" or historic flood height data would indicate a lower flood elevation. If this method is not adequate to allow the Floodplain Manager to confidently determine the flood height or if the applicant is not satisfied with the height determined the applicant shall be required to utilize one of the alternate methods set forth below.
2. Development determined to represent a low to moderate risk and/or costing less than fifty thousand dollars (\$50,000) shall provide the results of a Quick-2 engineering analysis or attempt to obtain a free Base Flood Elevation by submitting a Letter Of Map Amendment request to FEMA or obtain flood height data by using the USGS methodology set forth in the USGS Water Resources Investigations Report 87-4111. These semi-detailed methods will be used by the Floodplain Manager to determine a "Community Flood Elevation". The Floodplain Manager shall enter the "Community Flood Elevation" in Section "G" of the Elevation Certificate. If the applicant is not satisfied with the height determined the applicant shall be required to utilize the method set forth below.
 3. Development determined to represent a high risk and/or costing more than fifty thousand dollars (\$50,000) shall develop a Base Flood Elevation using a detailed engineering study method such as HEC-ras. This data shall be prepared and certified by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms and a completed Elevation Certificate. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Manager. Base Flood Elevations determined using this method can be used to rate flood insurance, typically resulting in a reduced premium.
- (2) All subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the Approximated Floodplain area (F4) and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data.
- A. This data may be available from an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resource Conservation Service or state and local water resource department.

- B. If the required data is not available from other sources the applicant shall develop the technical data using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts.
- (c) AE Area Without Floodway (F3). Within any AE area without floodway, no new construction or development shall be allowed unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the 100-year flood more than one (1) foot at any point. This requirement can be satisfied by utilization of the floodway area where determined.
- (d) Alteration or Relocation of a Stream.
- (1) Whenever a developer intends to alter or relocate a stream within the Floodplain Area the developer shall notify in writing, by certified mail, the City of Benwood Floodplain Administrator, The State Coordinating Office, and any adjacent communities and property owners of all such intended activities prior to the alteration or relocation of the stream. Copies of all required notifications must be submitted to the Federal Insurance Administration. In addition prior to issuing the local permit the Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval. Contact information for State and Federal permitting authorities as well as addresses for required notification of appropriate County, State and Federal government agencies are contained in the Marshall County Stream Alteration administrative procedures.
 - (2) The developer shall also assure the City of Benwood in writing that the carrying capacity within the altered or relocated portion of the stream will be maintained. The Floodplain Administrator may require the applicant to demonstrate that the altered or relocated portion of stream will provide equal or greater conveyance than the original stream segment. If hydrologic and hydraulic analyses are required, they shall only be undertaken by professional engineers, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.
 - (3) The Floodplain Administrator may require the use of certain "best practice" techniques in the construction of bridges, culverts or stream crossings to prevent damage, loss of stream crossings and localized flooding caused by blockage. These techniques may include, but are not limited to, wing walls, trash grates or requiring openings to be of sufficient size to pass debris and/or anticipated future increases in flood heights.
 - (4) All new and replacement bridges, culverts and other stream crossings shall adhere to the relevant anchoring requirements contained in this Ordinance.

- (5) The developer is required to provide the community with a legal agreement detailing all scheduled inspections and maintenance to be performed on altered or relocated watercourses including culverts, bridges and other stream crossings. It shall be the responsibility of the applicant to transfer this agreement to the new owner when the land associated with the watercourse alteration is transferred. A copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 1747.08(c).
- (6) The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and must pay any fees or other costs assessed by FEMA for this purpose.
(Ord. 9-24-09.)

1747.05 CRITERIA FOR BUILDING AND SITE PLAN APPROVAL.

(a) General. Permits are required in order to determine whether all new construction or substantial improvements are:

- (1) Located in an identified Floodplain or Floodway.
- (2) Approved by County Health Department for Well, Septic and other permits.
- (3) Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (4) Constructed with material and utility equipment resistant to flood damage as outlined in FEMA Technical Bulletin 2-93 (FIA-TB-2) or the most recent revision thereof.
- (5) Constructed by methods and practices that minimize flood damage.
- (6) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(b) Basic Format. The basic format of the permit shall include the following:

- (1) Name and address of applicant.
- (2) Name and address of owner of land on which proposed development is to occur.
- (3) Names, addresses, and valid West Virginia license numbers of all contractors working at the building site, or affidavits stating that work is being performed by individuals exempt from contractor licensing as set forth in Title 28, Series 2, section 3.9 (b) of the West Virginia Code of State Regulations or the most recent revision thereof.
- (4) A description of site location sufficient to locate the project including tax map and parcel number and most recent deed book and page number.

- (5) A standard site plan showing size and location of the proposed development as well as any existing buildings or structures. The site plan shall also show all adjacent roads and watercourses with direction of flow, the lowest adjacent grade to the proposed foundation and/or toe of fill, the Base Flood Elevation and the location of the floodway boundary when applicable.
 - (6) An acknowledgment that the applicant agrees to pay any and all fees associated with the permitting process as set forth in Section 1747.07(j).
 - (7) An acknowledgment that the applicant agrees to allow authorized representatives of floodplain management programs access to the development to inspect for compliance.
 - (8) The contract required by West Virginia Code of State Regulations, Title 28, Series 4, and all addendums to the contracts) shall be presented to the Floodplain Administrator for review within five (5) business days of contract signing. The community does not require and will not keep copies of the contracts or addendums. Failure to present contract or addendums for review shall void the permit. If a licensed contractor is not involved, or the work is of an aggregate value of less than ten thousand dollars (\$10,000) including materials and labor, a brief written description of proposed work and the estimated value will suffice.
- (c) Elevation and Flood Proofing Information.
- (1) All applicants are encouraged to exceed the minimum elevation requirements contained herein. Flood insurance rates can be lowered significantly by increasing the elevation of the lowest floor above the freeboard height required by this Ordinance.
 - (2) Depending on the type of structure involved, the following information shall also be included in the application for work within the Floodplain Area:
 - A. For structures to be elevated two feet above the Base Flood Elevation:
 1. A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
 2. A determination of elevations of the Base Flood, existing ground, proposed finished ground and lowest floor, certified by a registered professional engineer or licensed professional surveyor.
 3. Plans showing the method of elevating the proposed structure including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the Floodplain Administrator, a Registered Professional Engineer or Architect shall prepare these plans.
 4. Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to two feet above the Base Flood Elevation at the building site.

5. During the course of construction, as soon as the basic elements of the lowest floor are in place and before further vertical construction, it is highly recommended that the applicant check for error by obtaining elevation data completed by a registered professional engineer or licensed professional surveyor certifying the height of the lowest floor. If a mistake in elevation has been made this is the best time to correct the error.
 6. A Nonconversion Agreement shall be signed by the applicant whenever the community determines that the area below the first floor could be converted to a non-conforming use (generally applies to enclosed areas below base flood elevation that are 5 ft. high or more). This agreement shall state:
 - a. The area below Base Flood Elevation shall not be converted for use other than for parking, building access or for allowable storage as detailed in this Ordinance.
 - b. The applicant agrees to notify prospective buyers of the existence of the non-conversion agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature. A copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 1747.08(c).
- B. For structures to be flood proofed to two feet above the Base Flood Elevation (nonresidential structures only):
- All applicants are encouraged to exceed the minimum flood proofing requirements contained herein. Flood insurance rates can be lowered significantly by increasing the level of flood proofing above the height required by this Ordinance. In order to obtain an "elevation credited" flood insurance rate on dry flood proofed buildings, flood proofing must extend at least one foot above the Base Flood Elevation.
1. Plans showing details of all flood proofing measures, prepared by a registered professional engineer, showing the size of the proposed structure and its relation to the lot where it is to be constructed.
 2. A determination of elevations of the Base Flood, existing ground, proposed finished ground, lowest floor, and flood proofing limits; certified by a registered professional engineer or licensed professional surveyor.

3. A Flood proofing Certificate, FEMA 81-65, as revised by FEMA, shall be prepared by the registered professional engineer who prepared the plans in subsection (c)(2)B.1. hereof, stating the structure in question, together with attendant utility and sanitary facilities is designed so that:
 - a. The structure is watertight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
 - b. The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.
- C. For structures constructed of flood resistant materials used solely for parking of vehicles, or storage, (Appurtenant Structures only):
 1. A site plan prepared by a licensed professional surveyor or others of demonstrated qualifications showing elevation of existing ground, proposed finished ground and lowest floor. The plan shall also show details of proposed flood resistant materials usage and the size of the proposed structure and its relation to the lot where it is to be constructed. The location of the floodway boundary shall be represented on the plan when a flood way is present on the site.
 2. An elevation report or certificate, based on finished construction, must be prepared by a licensed professional surveyor or others of demonstrated qualifications. This certificate or report must confirm that the structure in question, together with attendant utilities is designed so that:
 - a. Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) are used in the construction of the structure from the lowest structural element to two feet above the Base Flood Elevation and that all utilities are located at least two feet above the Base Flood Elevation.
 - b. Hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or Architect or meet or exceed the following minimum criteria:
 - i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - ii. The bottom of all openings shall be no higher than one foot above grade.

- iii. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
 3. In addition, the applicant shall sign a Non-conversion Agreement and notify prospective buyers of the existence of the agreement. It shall be the responsibility of the applicant to transfer the Nonconversion Agreement to any new owner at closing via notarized signature. A signed copy of the transferred Non-conversion agreement shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 1747.08(c).
- (d) Site Plan Criteria. The owner or developer of any proposed development, including subdivisions, commercial development and manufactured home parks, shall submit a preliminary site plan to the Floodplain Administrator that includes the following information:
 - (1) Name of registered professional engineer, licensed professional surveyor or other qualified person responsible for providing the information required in this section.
 - (2) A map showing the location of the proposed subdivision and/or development with respect to floodplain areas, proposed lot sites, and fills. In addition, it is required that all subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the approximated floodplain (F4) and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data and shall delineate a floodway. If FEMA has completed a Flood Insurance Study (FIS), that data must be used to substantiate the base flood. Otherwise, the developer may submit data provided by an authoritative source, such as U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, state and local water resource departments, or technical data developed using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a registered professional engineer, who shall certify that the technical methods used correctly reflect currently accepted technical concepts.
 - (3) Where the subdivision and/or development lies partially or completely in the floodplain areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet depending upon the slope of the land and identify accurately the boundaries of the floodplain areas.

- (4) Where the subdivision lies partially in the floodplain area and all proposed development will take place on natural grade a significant vertical distance above the floodplain boundary depicted on the map, development of detailed Base Flood Elevation data may not be necessary. In these cases the site plan for the proposed development must show contours at intervals of two (2) or five (5) feet and clearly delineate the area to be developed and the location of the floodplain areas as depicted on the FEMA map. A registered professional engineer, licensed professional surveyor or others of demonstrated qualifications must certify the site plan.

(e) Restrictions to Subdivision of Land in Floodplain Areas. Subdivision of land in the floodplain area must result in lots that include a buildable portion outside of the identified flood hazard area and be served by streets within the proposed subdivision having surfaces not lower than 1 foot below the elevation of the line defining the floodplain limits. All new structures must be sited on the portion of the subdivided lot that is located outside of the identified flood hazard area. (Ord. 9-24-09.)

1747.06 SPECIFIC REQUIREMENTS.

(a) Design and Construction Standards. In order to prevent excessive damage to buildings, structures, and related utilities and facilities, the following restrictions apply to all development, subdivision proposals, manufactured home parks, new construction and to construction of substantial improvements, and the repair of substantial damage, to existing structures occurring in the Floodplain Area.

- (1) Basements and lowest floors.

- A. Residential Structures. All new construction, relocation, substantial improvements, including repair of substantial damage, of residential structures must have the lowest floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation.
- B. Non-residential Structures. All new construction, relocation, substantial improvements, including repair of substantial damage, of nonresidential structures must have the lowest floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation; or, together with attendant utility and sanitary facilities, be designed so that the structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
- C. Openings. For all new construction, relocation, substantial improvements, and repair of substantial damage, those fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:

1. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 2. The bottom of all openings shall be no higher than one foot above grade.
 3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (2) Manufactured home placement. Certain unique characteristics of manufactured homes installed in flood hazard areas pose an elevated risk of substantial damage to property. Thus:
- A. Manufactured homes to be placed or substantially improved within flood hazard areas shall be installed in accordance with the following standards:
1. The lowest floor, ductwork and utilities including HVAC/heat pump shall be elevated two feet above the Base Flood Elevation.
 2. Elevation shall be on reinforced piers on a permanent foundation or other foundation elements of at least equivalent strength engineered for use in a flood hazard area. Installation designs incorporating dry stacked block piers shall not be used in flood hazard areas.
 3. All manufactured homes shall be securely anchored to an adequately anchored foundation system in compliance with the requirements of 42 West Virginia Code of State Regulations, Series 19, Sections 10.1,10.2, and 10b as authorized by West Virginia Code § 21-9-4. The anchoring shall be adequate to resist flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to the over-the-top and frame ties, attached to permanent foundation elements. Ground anchors may not be adequate to satisfy flood specific anchoring requirements. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
 4. Permanently attached rigid skirts and perimeter wall skirts of brick or block must have openings; this type of skirting can collapse during floods and compromise supporting piers. The openings must be designed to automatically equalize hydrostatic flood forces by allowing for entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:
 - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

- b. The bottom of all openings shall be no higher than one foot above grade.
 - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
 - 5. Any additions to a manufactured home shall be similarly anchored and vented.
 - B. The licensed West Virginia Manufactured Home Installer placing the unit shall perform a site inspection and certify in writing that the manufactured home has been installed to the standards set forth in this Ordinance.
- (3) Appurtenant structures.
 - A. Except as provided in subsection (a)(3)B. hereof, appurtenant structures shall be located out of the floodplain area or elevated to two feet above the Base Flood Elevation.
 - B. Where appurtenant structures not connected to the principal structure are to be located on sites below the Base Flood Elevation, the following flood damage reduction provisions apply:
 - 1. Structures shall be no more than 600 square feet in size and valued at less than ten thousand dollars (\$10,000).
 - 2. Floors shall be at or above grade on at least one side.
 - 3. Structures shall be located, oriented and constructed to minimize flood damage.
 - 4. Structures shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - 5. Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) shall be used in the construction of the structure from the lowest structural element to two feet above the Base Flood Elevation.
 - 6. Machinery, electric devices or appliances, and all utilities shall be located at least two feet above the Base Flood Elevation.
 - 7. The venting requirements contained in subsection (a)(1) are applicable and shall be strictly adhered to.
 - C. A Nonconversion Agreement shall be signed by the applicant stating that the use of the appurtenant structure or detached or attached garage shall not be changed from the use permitted, acknowledging that the structure may be subject to greater flood risk and that higher flood insurance premiums may be possible, and that a change in use may require full compliance with this Ordinance. The applicant agrees to notify prospective buyers of the existence of this agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature. A copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 1747.08(c).

- (4) Recreational vehicle placement. Recreational vehicles to be placed within any floodplain area shall either:
- A. Be on site for fewer than 180 consecutive days. Or,
 - B. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect utilities and security devices, and has no permanently attached additions. Or,
 - C. Be installed in accordance with the Manufactured Home Placement requirements and all other flood reduction requirements contained in this Ordinance.
- (5) Fill. The City of Benwood officially recognizes the beneficial functions the floodplain serves in storage and transportation of water during floods. Placement of fill in the floodplain area is discouraged and should be minimized. No fill shall be permitted in the floodway. Placement of fill in the floodplain is restricted to functional purposes such as elevating a structure. Fill shall only be permitted in the same permit with the related structure or other functional purpose. Placement of fill to dispose of spoil from excavation or to elevate yards, parking lots, or fields will not generally be considered a functional purpose. The Floodplain Administrator may require the developer to provide compensatory storage before permitting fill. No fill shall be permitted unless it meets the requirements of Section 1747.04(a). All fill placed in the floodplain area shall meet or exceed the following standards:
- A. Fill shall be used only to the extent to which it does not adversely affect adjacent properties. The City of Benwood may require the applicant to demonstrate through engineering reports that proposed fill would not adversely affect adjacent properties. When required, hydrologic and hydraulic analyses shall be undertaken only by professional engineers who shall certify that the technical methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed and sealed by the responsible professional, providing: a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the City of Benwood. During permit review the community shall consider the following issues that have the potential to cause adverse impact to adjacent properties:
 - 1. Unacceptable increases in flood heights.
 - 2. Blocking drainage from adjacent property.
 - 3. Deflection of floodwaters onto adjacent existing structures.
 - 4. Increases to stream velocity initiating or exacerbating erosion problems.
 - 5. Other unique site conditions may be considered when determining whether fill will cause adverse impact to adjacent property including, but not limited to, subsidence areas, Karst topography, stream blockages, and steep topography adjacent to the channel.

- B. Fill shall be used only to the extent to which it does not adversely affect the capacity of channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility or system.
- C. Filled site must be contoured to drain properly (avoid ponding).
- D. Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points before the start of sloping required in the following subsections. For nonresidential structures, fill shall be placed to provide access acceptable for intended use. At grade access, with fill extending laterally fifteen (15) feet beyond the building line shall be provided to a minimum of twenty-five percent (25%) of the perimeter of a nonresidential structure.
- E. Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted. No trash or woody debris shall be buried on site.
- F. Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling. Fill compaction standards must be appropriate to proposed post fill use. Particular attention is necessary when fill is being used to elevate a structure.
- G. Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Floodplain Administrator.
- H. Fill site and fill must be protected from erosion.
 - 1. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of five feet per second or less must be protected from erosion by covering them with grass, vines, weeds, or similar vegetative undergrowth.
 - 2. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of greater than five feet per second must be protected from erosion by armoring them with stone or rock slope protection.
- I. All applicants placing fill in a mapped flood hazard area must obtain a Conditional Letter of Map Revision (CLOMR) from FEMA when directed to do so by the Floodplain Administrator before a permit can be issued. After fill is finished the applicant must convert the CLOMR to a Letter of Map Revision based on fill (LOMR-F) before a certificate of compliance can be issued.
- J. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and must pay any fees or other costs assessed by FEMA for this purpose.

- (6) Placement of structures. All buildings and structures shall be constructed and placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of floodwaters.
- A. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow and,
 - B. So far as practicable, structures shall be placed approximately on the same flood-flow lines as those of adjoining structures.
- (7) Anchoring.
- A. All buildings and structures including stream crossings shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement, thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.
 - B. All air ducts, large pipes, and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.
- (8) Flood protection setback.
- A. A Flood Protection Setback equal to twice the width of the watercourse channel measuring from the top of one bank to the top of the opposite bank or 50 feet, whichever is less, shall be maintained from the top of the banks of all watercourses. To reduce erosion, natural vegetation shall be maintained in this area. Where natural vegetation does not exist along the watercourse and conditions for replanting are suitable, high priority shall be given to planting vegetation in the setback area to stabilize banks and enhance aquatic resources.
 - B. Necessary public works and temporary construction may be exempted from this subsection.
 - C. The Floodplain Administrator may consider an appeal to the Flood Protection Setback requirement if the applicant demonstrates that it is impossible to allow any development without encroachment into the Flood Protection Setback area. The appeal conditions shall be the minimum necessary and shall be made only after due consideration is given to varying other siting standards, such as side, front and back lot line setbacks.
- (9) Storage.
- A. No materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal or plant life, shall be stored below Base Flood Elevation.
 - B. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or readily removable from the area within the time available after flood warning.
 - C. Due to the potential of masking the natural elevation and making it more difficult to enforce this Ordinance, material that resembles “fill” material shall not be considered “storage” material for purposes of this subsection.

- (10) Utility and facility requirements.
 - A. All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
 - B. All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
 - C. All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
 - D. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (11) Drainage. Adequate drainage shall be provided to reduce exposure to flood hazard.
- (12) Backflow preventers. Backflow prevention valves should be used for all enclosed structures with sewage or drainage facilities located in the floodplain. (Ord. 9-24-09.)

1747.07 ADMINISTRATION.

(a) Designation of Floodplain Administrator. The Code Enforcement Officer of the City of Benwood is hereby appointed as Floodplain Administrator to administer and implement this local law by granting or denying floodplain development permits in accordance with its provisions.

(b) Development Permits and Site Plan Approvals Required. It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement, repair of substantial damage, the placement or relocation of any structure (including manufactured homes) within Marshall County, unless a permit application and standard site plan has been completed, and a permit has been obtained from the Floodplain Administrator. In addition, where land that is either partially or fully in the regulatory floodplain is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a detailed site plan must be submitted to, and approved by, the Floodplain Administrator prior to any development.

(c) Approval of Permits and Plans.

- (1) The Floodplain Administrator shall review, or shall cause to be reviewed, all permit applications and plans in order to determine whether proposed building sites are reasonably safe from flooding.
- (2) All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the State and all other applicable codes and ordinances.
- (3) The Floodplain Administrator shall not issue a permit to any person who does not possess a valid contractor's license when a contractor's license is required by West Virginia State Code 21-11-10.

- (4) The Floodplain Administrator, before issuance of the permit, shall require the applicant to furnish satisfactory proof that such person is duly licensed as a contractor under the provisions of West Virginia State Code. If the applicant is not licensed a written affidavit that such person is not subject to licensure as a contractor or subcontractor as defined in West Va. Code 21-11-3 shall be provided to the Floodplain Administrator and placed in the permit file.
- (5) The Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval.
- (6) The Floodplain Administrator shall provide a copy of all permits to the County Assessor as required by West Virginia State Code 11-3-3A.
- (7) The Floodplain Administrator shall provide a copy of all permits for new structures to the County E-911 addressing coordinator.
- (8) The County E-911 addressing coordinator shall provide a copy of all requests for addresses for new structures to the County Floodplain Administrator.
- (9) The City of Benwood shall provide sufficient space to allow the Floodplain Administrator to keep on file in perpetuity, in a location safe from natural hazards, all information collected during the course of the administration of this Ordinance.

(d) Application Procedures. Application for a permit and/or site plan approvals shall be made, in writing, on the forms supplied by the City of Benwood, and shall include all information stipulated under Section 1747.05.

(e) Changes. After the issuance of a permit or site plan approval by the Floodplain Administrator, no changes of any land shall be made to the application, permit or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the Floodplain Administrator.

(f) Permit Placards.

- (1) The Floodplain Administrator shall issue a permit placard, which shall be prominently displayed on the premises during the time construction is in progress. This placard shall show the number of the permit, the date of its issuance and be signed by the Floodplain Administrator.
- (2) In areas of flood hazard it shall be unlawful to inspect and approve or install a temporary electrical utility connection to any building or premises, or both, or part thereof hereafter created, erected or rebuilt until a placard has been issued by the Local Floodplain Administrator indicating that the development has applied for a permit and agreed to the requirements of this local law or, in the case of development occurring outside of the identified flood hazard area, a Certificate of Compliance has been issued.

(g) Start of Construction. Work on the proposed development shall begin within 180 days after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. All work on the proposed development must be completed within 18 months of permit issuance, at which time the permit shall expire, unless a time extension is granted in writing by the Floodplain Administrator. The request for a time extension shall be in writing and shall state the reasons for the extension. When considering an extension, the Floodplain Administrator shall consider the following criteria:

- (1) Has the developer diligently pursued the completion of the proposed development during the 18 months?
- (2) Will the granting of the extension be detrimental to public safety, health, or welfare or injurious to other property?

(h) Stop-Work Orders, Inspections and Revocations.

(1) Stop-work orders.

A. The Floodplain Administrator shall issue, or cause to be issued, a "Stop Work Order Notice" for any development found ongoing without having obtained a permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 1747.08(c).

B. The Floodplain Administrator shall issue, or cause to be issued, a "Stop Work Order Notice" for any development found noncompliant with the provisions of this law and/or the conditions of the permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 1747.08(c) of this local law.

(2) Inspections and revocations.

A. During the construction period, the Floodplain Administrator or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances.

B. If the Floodplain Administrator discovers that the work does not comply with the permit application or any applicable laws and ordinances or that there has been false statement or misrepresentation by any applicant, the Floodplain Administrator shall issue a "Stop Work Order Notice" revoke the permit and request a temporary injunction.

C. The Floodplain Administrator or other authorized official may inspect any development covered by this or a previous ordinance to determine whether any portion of the development has been altered to be in non-compliance with the requirements of this Ordinance.

- (i) Certificate of Compliance.
- (1) In areas of flood hazard it shall be unlawful to occupy, or to permit the use or occupancy, of any building or premises, or both, or part thereof hereafter created, erected, installed, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the Local Floodplain Administrator stating that the building or land conforms to the requirements of this local law. Occupying or using a building or premises in violation of this section shall subject the violator to the penalties described in Section 1747.08(c).
 - (2) In areas of flood hazard it shall be unlawful to inspect and approve a permanent utility connection to any building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until the inspector is in possession of a copy of the certificate of compliance issued by the Local Floodplain Administrator stating that the particular development being inspected conforms to the requirements of this local law. Inspection and approval of utilities in violation of this section shall subject the violator to the penalties described in Section 1747.08(c).
 - (3) In areas of flood hazard it shall be unlawful to inspect and approve a permanent utility connection to any building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until a certificate of compliance has been issued by the Local Floodplain Administrator stating that the development conforms to the requirements of this local law. Installation of utilities in violation of this section shall subject the violator to the penalties described in Section 1747.08(c).
 - (4) A certificate of compliance shall be issued by the Local Administrator upon satisfactory completion of all development in areas of special flood hazard.
 - (5) Issuance of the certificate shall be based upon the inspections conducted as prescribed in this Ordinance or local administrative procedures, and any finished construction elevation certificate, hydraulic data, flood proofing certificate, or encroachment analyses which may have been required as a condition of permit approval.
- (j) Fees.
- (1) A Floodplain determination fee of thirty dollars (\$30.00), payable to the City of Benwood shall be assessed on all proposed development.
 - (2) Application for a permit for proposed development determined to be occurring in a flood hazard area regulated by this Ordinance shall be accompanied by an additional fee, payable to the City of Benwood, based upon the estimated value of the proposed construction as determined by the Floodplain Administrator at the following rates:

<u>Type of Development</u>	<u>Fee</u>
1 and 2 Family Dwelling	\$5.00/per thousand
Accessory Structures	\$5.00/per thousand
Any other structures	\$5.00/per thousand
Site plans, grading and filling (additional fee)	\$5.00/per acre or part thereof
Floodway development reviews (additional fee)	\$20.00/per thousand

- (3) In addition, the applicant shall be responsible for reimbursing the City of Benwood for any additional costs for services necessary for review and/or inspection of proposed development. Services include, but are not limited to, professional engineering and surveying. The Floodplain Administrator may require a deposit towards these additional costs. Additional costs may include reimbursement for contracted services.
- (4) Due to the increased cost of processing, when any work for which a permit is required by this Ordinance is started or proceeded with prior to obtaining a permit the fees above specified shall be doubled. The additional fee is intended to partially reimburse the County for the additional cost of processing permits for work already underway. To more fully recover this cost the fees above shall be tripled for every subsequent occurrence by the same person. Payment of the increased fee shall not relieve any person from complying fully with the requirements of this Ordinance in the execution of the work or from other penalties prescribed herein.
- (5) There is created in the City of Benwood a special revenue fund, administered by the City of Benwood, designated the "Floodplain Development Fund". This fund is not part of the General Revenue Fund of the City of Benwood. All fees collected pursuant to this Ordinance shall be deposited into the Floodplain Development Fund. The Floodplain Development Fund shall contain all fees or penalties collected pursuant to this Ordinance, any appropriations to the fund; and any gifts, grants or contributions received.
- (6) The City of Benwood is restricted to, and shall distribute funds from, the Floodplain Development Fund only for administrative costs associated with management of floodplain development, the maintenance or creation of maps and studies used to administer floodplain development and other activities which will promote and enhance flood plain management issues generally. (Ord. 9-24-09.)

1747.08 APPEALS AND PENALTIES.

(a) Appeals. Whenever any person is aggrieved by a decision of the Floodplain Administrator with respect to the provision of this Ordinance, it is the right of that person to appeal to the City of Benwood which shall be known as the Appeals Board. Such appeal must be filed with the City of Benwood, in writing, within thirty (30) days after notification of the decision. Upon receipt of such appeal, the Appeals Board shall set a time and place not less than 10 nor more than 30 days for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time they may appear and be heard. The determination by the Appeals Board shall be final all cases.

(b) Appeal Review Criteria.

- (1) All appeals contesting only the permit fee, the cumulative substantial damage requirement, the flood protection setback requirement, or the freeboard requirements, may be handled at the discretion of the Appeals Board.
- (2) All decisions on appeals to all other provisions of this Ordinance shall adhere to the following criteria:
 - A. Affirmative decisions shall only be issued by the Appeals Board upon:
 1. A showing of good and sufficient cause,
 2. A determination that failure to grant the appeal would result in exceptional hardship to the applicant, and
 3. A determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
 - B. An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief. Financial hardship, as a sole criterion, shall not be considered sufficient justification to grant an appeal.
 - C. An affirmative decision shall be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - D. The Appeals Board shall notify the applicant in writing over the signature of a community official that:
 1. The issuance of a decision to allow construction of a structure below the Base Flood Elevation will result in increased premium rates for flood insurance,
 2. Such construction below the Base Flood Elevation increases risk to life and property.Such notifications shall be maintained with a record of all decisions as required in this subsection; and
 - E. The Appeals Board shall:
 1. Maintain a record of all decisions including justification for their issuance, and
 2. Report such decisions issued in its biannual report to the Federal Insurance Administration.
 - F. An affirmative decision shall not be granted for any construction, development, use or activity within any floodway area that would cause any increase in the Base Flood Elevation.

(c) **Penalties.** Any person who fails to comply with any or all of the requirements or provisions of this Ordinance or direction of the Floodplain Administrator, or any other authorized employee of the community, shall be unlawful and shall be referred to the Benwood City Attorney who shall expeditiously prosecute such violators. A violator shall pay a fine to the City of Benwood of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus cost of prosecution. In default of such payment such person shall be imprisoned for a period not to exceed 10 days. Each day during which any violation of this Ordinance continues shall constitute a separate offense. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this Ordinance. The imposition of a fine or penalty for any violation of, or noncompliance with the Ordinance shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this Ordinance may be declared by the City of Benwood to be a public nuisance and abatable as such. (Ord. 9-24-09.)

1747.09 GOVERNMENT ACTIONS.

(a) **Municipal Annexation.**

- (1) The County floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the Municipality for all annexed areas until the Municipality adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program.
- (2) Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards.
- (3) All plats or maps of annexation shall show the floodplain boundaries, Base Flood Elevation and location of the floodway where determined.
- (4) In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 5922 (a)(9)(v) all NFIP participating communities must notify the Federal Insurance Administration in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that all Flood Insurance Rate Maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority must be included with the notification.
- (5) NFIP participating communities must notify the State Coordinating Office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. A copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority must be included with the notification.

(b) Permits for Government Entities. Unless specifically exempted by law, all public utilities and Municipal, County, State and Federal entities are required to comply with this Ordinance and obtain all necessary permits. Any entity claiming to be exempt from the requirements of this Ordinance must provide a written statement setting forth the rationale for exemption. In addition the entity claiming exemption shall provide copies of all relevant legal documentation demonstrating the exemption.
(Ord. 9-24-09.)

1747.10 SEVERABILITY AND MUNICIPAL LIABILITY.

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

(b) Liability. The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the City of Benwood, or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the City of Benwood. All applicants proposing development in or near a flood hazard area are urged to locate development as far away from, and as high above, all flooding sources as possible.
(Ord. 9-24-09.)

ARTICLE 1751
International Building Code; Residential Code;
Property Maintenance Code

1751.01 Adoption.

1751.01 ADOPTION.

(a) The City of Benwood does hereby adopt as if fully set forth herein the 2009 International Building Code and the 2009 Residential Code Incorporating the Property Maintenance Code and the Existing Building Code.

(b) These Building Codes shall supersede any and all other building codes previously adopted by the City of Benwood, after their adoption.
(Passed 3-27-12.)

ARTICLE 1752
Residential Rental Structures

<p>1752.01 Purpose; scope.</p> <p>1752.02 Definitions.</p> <p>1752.03 Applicability.</p> <p>1752.04 Illegal conditions; penalty.</p> <p>1752.05 Application for letter of compliance; filing deadlines; fees.</p> <p>1752.06 Inspections.</p> <p>1752.07 Grant of letter of compliance; expiration.</p> <p>1752.08 Inspection report; notification; written agreement.</p>	<p>1752.09 Abatement of noncompliance or nuisance.</p> <p>1752.10 Emergency abatement.</p> <p>1752.11 Appeals.</p> <p>1752.12 Structures and utilities.</p> <p>1752.13 Electrical.</p> <p>1752.14 Lighting.</p> <p>1752.15 Paint.</p> <p>1752.16 Fire safety.</p> <p>1752.17 Maximum occupancy.</p> <p>1752.18 Owner and operator responsibilities.</p> <p>1752.19 Occupant responsibilities.</p>
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1752.01 PURPOSE; SCOPE.

(a) Purpose. The purpose of this article is to establish minimum health and safety standards for rental housing in the City. These standards relate to the condition, maintenance and occupancy of rental dwellings and are intended to ensure that rental housing is safe, sanitary and suitable. An owner-occupied single-family dwelling is specifically excluded unless occupied by more than one roomer. State and/or Federally owned housing units are also specifically excluded.

(b) Scope. This article applies to all rental dwelling units within the City.
(Passed 7-12-16.)

1752.02 DEFINITIONS.

For the purpose of interpreting this article, certain words, terms and expressions are herein defined. Words used in the present tense include the future; the singular number includes the plural, the plural includes the singular; the word "shall" is always mandatory. The words "dwelling", "dwelling unit", "lodging houses", "rooming unit", "dormitory" and "premises" shall be construed as though they were followed by the words "or any part thereof".

- (1) "Abate" means to end a nuisance, emergency or nonconformance.
- (2) "Approved" means as per the State Building Code or an applicable property maintenance code adopted by the city.

- (3) "Basement" or "cellar" means occupancy of dwelling unit below grade. No basement or cellar shall be used as a habitable room or dwelling unit unless the floors are impervious to excessive dampness and there is adequate ventilation and means of egress. Below grade dwelling units shall have either direct access to the outdoors or demonstrable adequate window exit.
- (4) "Dwelling" means any house, building or mobile home or portion thereof intended to be occupied as the place of habitation of human beings, either permanently or transiently. Federal or State-licensed health and custodial facilities are excluded.
- (5) "Dwelling unit" means one or more rooms intended to be occupied for living purposes.
 - A. "Apartment" means a room or group of rooms intended to be occupied for living, sleeping, cooking and eating.
 - B. "Fraternity house" or "sorority house" means a building, other than a hotel or motel that is occupied as a dwelling predominantly by members, candidates for membership, employees and guests of the same fraternity or sorority.
 - C. "Rooming unit" means a room or group of rooms intended to be occupied for living and sleeping, but not for cooking.
 - D. "Dormitory" means a building under single management renting sleeping accommodations to more than fifteen persons without individual bathroom or eating facilities.
 - E. "Boarding house" means a building under single management renting sleeping accommodations to fifteen persons or less without individual bathroom or eating facilities.
 - F. "Lodging house" means the same as "boarding house".
- (6) "Emergency" means a condition arising from actual or imminent failure and resulting in a health or safety hazard to occupants or dwelling.
- (7) "Family" means an individual or two or more persons related to each other by blood, marriage or legal adoption, including foster children, or in the alternative, not more than three unrelated persons.
- (8) "Garbage" means the animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.
- (9) "Habitable space" means a space in a dwelling for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas are not habitable space.
- (10) "Hotel" means a building under single management in which more than fifteen rooms are rented providing sleeping accommodations for transients with or without meals, having an annual turnover of room occupancy exceeding three hundred percent (300%) in which the rooms are not directly accessible from an outdoor parking area.
- (11) "Inspector" means the Code Enforcement Officer, and such other employees or designees, of the City Code Enforcement Department, as have been trained in conducting inspections or parts of inspections.
- (12) "Inspection report" means a document issued by the Inspector to show that the premises have been inspected, the date and time of such inspection and setting time periods for rectification of deficiencies noted.
- (13) "Landlord" means the owner of a building including one or more dwelling units.
- (14) "Letter of compliance" means a document issued by the Housing Inspector indicating the subject inspection found the premises to be in substantial compliance with this article on the date of inspection and enclosing a copy of the inspection report.

- (15) "Motel" means an establishment under single management which provides lodging and parking for transients and in which the rooms are so designed to provide accessibility from an outdoor parking area and having an annual turnover of room occupancy exceeding three hundred percent (300%).
- (16) "Nonconformance" means a condition where a dwelling unit, or a dwelling is not in compliance with one or more ordinances of the City of Benwood or is used in a manner not in compliance with one or more ordinances of the City of Benwood.
- (17) "Nonconforming occupancy" means more than three unrelated persons occupying a dwelling unit and registered in accordance with the City Zoning Ordinance.
- (18) "Nuisance" means an act or omission that threatens the health, morals, safety, comfort, convenience or welfare of citizens of the City of Benwood.
- (19) "Occupant" means any person living, sleeping, cooking or eating in, or having actual possession of a dwelling unit.
- (20) "Operator" means any person, including the owner, who has charge, care or control of a building including one or more rental dwelling units.
- (21) "Owner" means any person who alone, jointly or as tenant in common with others, has legal or equitable title to any dwelling unit with or without accompanying actual possession thereof. For the purposes of this article, "owner" includes an agent of the owner empowered by the owner to act on the conditions or under the circumstances in question.
- (22) "Owner-occupied single-family dwelling" means any townhouse, condominium or detached dwelling that is occupied as a dwelling by the owner. It is one dwelling unit even if no more than two roomers occupy one bedroom of the dwelling.
- (23) "Person" means a natural person, his or her heirs, executors, administrators, or assigns and also a firm, partnership or corporation and its, or their, successors or assigns.
- (24) "Plumbing" includes the following supplied facilities and equipment: gas, water and waste pipes, sumps, drains, vents and all supplied facilities and equipment connected to them.
- (25) "Premises" means a lot and its buildings and other improvements.
- (26) "Rent" means payment of money, goods, labor, service or otherwise for use of a dwelling.
- (27) "Rubbish" means any waste material except garbage.
- (28) "Story" means that part of a building comprised between any floor and the floor or attic next above; the first story of a building is the lowest story having at least one-half of its height of one or more walls above the highest level of adjoining ground.
- (29) "Supplied" means paid for, furnished, provided by, or under the control of the owner or operator.
- (30) "Tenant" means an occupant of a rental dwelling unit who has signed a lease or made a verbal contract exceeding a seven consecutive day commitment.
- (31) "Transient" means an individual who rents sleeping, living and sanitary facilities on a daily or weekly basis.
- (32) "Promptly" means to perform readily or immediately.
(Passed 7-12-16.)

1752.03 APPLICABILITY.

- (a) Other Laws.
- (1) This article is not intended to abrogate any of the rights and responsibilities normally ascribed to the tenant or the landlord under the laws of West Virginia whether set out by case law or by the West Virginia Code or any other applicable laws.
 - (2) The minimum requirements of this article may not be waived, either intentionally or impliedly, by either party to a rental agreement.
 - (3) Violation of this article shall constitute a misdemeanor, and fine and punishment shall be in accordance with Section 1752.04. Willful and repeated violations with the requirements of this article by the occupants are illegal.
 - (4) If any provision of these regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.
- (b) Other Codes and Ordinances.
- (1) This article is in addition to all housing requirements of other City ordinances, and the law of the State, as the case may be.
 - (2) As soon as practicable and convenient, and in no event in more than thirty days after the passage of this article, there shall be filed in the office of the City Clerk, an index to all City housing requirements as contained in various codes and ordinances heretofore adopted by the City.
(Passed 7-12-16.)

1752.04 ILLEGAL CONDITIONS; PENALTY.

- (a) After ninety days from the effective date of this section, it shall be illegal for any owner or operator to rent or offer for rent any dwelling units for use in whole or in part for human habitation unless a written application for a letter of compliance has been filed for such dwelling unit by said owner or operator or a valid letter of compliance has been issued to said owner or operator for such dwelling unit. Any person who rents or offers for rent a dwelling unit subject to this article prior to filing a written application for a letter of compliance shall be subject to a minimum penalty of one hundred dollars (\$100.00) per month for each month that the unit is illegally occupied up to a maximum penalty of five hundred dollars (\$500.00) per month.
- (b) It shall be illegal for any person to occupy or allow any other person to occupy any dwelling unit more than the time period indicated in the Inspector's report for that dwelling unit or building, or after the Inspector finds that vacation of the dwelling unit or building is necessary before abatement of a nonconformance or nuisance can reasonably proceed.
- (c) It shall be illegal for any person to permit a state of nonconformance or nuisance to exist, under Sections 1752.06 to 1752.10 after the time set by the Inspector or the Housing Board of Adjustment and Appeals for abating the nonconformance or nuisance.
- (d) Persons in violation under Sections 1752.06 to 1752.10 shall, as a separate offense, be subject to a penalty in accordance with the following schedule:
- (1) First conviction of any offense, a fine not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00).

- (2) Second conviction of the same offense, a fine not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).
- (3) Third conviction of the same offense, a fine not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00).
- (4) Each successive conviction for the same offense shall result in a mandatory fine of five hundred dollars (\$500.00).
- (5) Persons in violation of any section or subsection s shall also be liable to revocation of their letter of compliance and their license to conduct business in the City of Benwood.

(e) The Inspector, upon finding an apparent violation of this article, may institute appropriate proceedings as detailed in this article.

(f) Application for a hearing under Section 1752.11 shall stay the effective date of the enforcement of Sections 1752.08 and 1752.09.
(Passed 7-12-16.)

1752.05 APPLICATION FOR LETTER OF COMPLIANCE; FILING DEADLINES; FEES.

(a) Application for a letter of compliance shall be submitted in writing, on forms provided, to the Inspector and shall contain at least:

- (1) The address or addresses of the dwelling;
- (2) The number of dwelling units in the dwelling;
- (3) The name, address and telephone number of:
 - A. The owner;
 - B. The agent, operator or other person to contact in case of emergency;
 - C. The person to be notified if a condition of nonconformance is found.

For each dwelling unit within the dwelling:

- (4) Whether the application is for an initial or a renewal letter of compliance;
- (5) Number of off-street parking spaces available on site; and
- (6) Dwelling unit identification or number.

(b) Renewal applications shall be filed at least thirty days before the expiration of the existing letter of compliance.

(c) Upon receiving an application for renewal of the letter of compliance, the Inspector shall arrange to reinspect the dwelling unit.

(d) Fees.

- (1) Application fee for rental housing units, exclusive of owner occupied housing units with roomers, dormitories and boarding or lodging house shall be twenty-five dollars (\$25.00) per dwelling unit; however, for those single structures containing six or more units, the application fee shall be fifteen dollars (\$15.00) per dwelling unit.
- (2) Application fee for owner-occupied housing units with more than one roomer shall be fifteen dollars (\$15.00) per sleeping room.
- (3) Application fee for boarding or lodging houses or dormitories shall be fifteen dollars (\$15.00) per sleeping room.
- (4) Application fee for hearing before the Housing Board of Adjustments and Appeals shall be twenty dollars (\$20.00), with that fee being refunded should either body determine a citation to be baseless.

- (5) Charge for missed appointments: twenty dollars (\$20.00) unless providing notification at least twenty-four hours prior to scheduled appointment.
- (6) Emergency call out (after normal business hours): forty dollars (\$40.00) for the first two hours; thereafter twenty dollars (\$20.00) per hour. A minimum charge of forty dollars (\$40.00) will be due on any emergency call out.
- (7) Court appearances: seventy-five dollars (\$75.00) per hour; one hour minimum charge.
- (8) Real estate inspections: seventy-five dollars (\$75.00) per hour; one hour minimum charge.
- (9) Duplicate copies of letter of compliance to the owner: one dollar (\$1.00) per copy. (Passed 7-12-16.)

1752.06 INSPECTIONS.

(a) The Inspector shall conduct all inspections during reasonable hours of the day and after presentation of proper identification. The owner may arrange, and the occupant shall have the opportunity, to be present during an inspection. In all cases, if the occupant or owner of a dwelling unit refuses entry to conduct inspection, the Inspector shall not conduct any such inspection without a search warrant. The Inspector shall take the necessary action to obtain such search warrant.

(b) The Inspector shall inspect within four years of the effective date of this section, all rental units.

(c) The Inspector shall promptly inspect any dwelling at the written request of the owner, or upon receipt of a written complaint from a person with demonstrable interest with the nature of the noncompliance specifically indicated and with evidence that the subject matter of the complaint has been reported to the operator in writing and that five working days have since passed without the operator having made an effort to correct the alleged problem. In addition, the Inspector may inspect any dwelling as frequently as necessary to assure abatement of the noncompliance. The Inspector shall not respond to a second letter or further letter by any person requesting an inspection where he has reason to believe the request is made for harassment and not made in good faith. If after inspection the dwelling unit is found in nonconformance with the requirements of this article, the Inspector shall proceed under Section 1752.04.

(d) Persons with demonstrable interest are: owner, occupant, tenant, lessee or other occupant in the same dwelling, owner or occupant of abutting properties.

(e) The fact that a complaint of nonconformance with this article is made by the occupant shall not be used as a ground, cause or basis for termination of the tenancy or reduction of services by the owner. However, at the end of any lease, the owner may change occupants.

(f) The inspection of any owner-occupied single-family dwelling with roomers shall be limited to the utilities and the areas occupied and used by the roomers and to the egress from those areas.

(g) The Inspector shall keep confidential all evidence exclusive of the inspection record, which he may discover or obtain in the course of an inspection made pursuant to this article and such evidence shall be considered privileged.
(Passed 7-12-16.)

1752.07 GRANT OF LETTER OF COMPLIANCE; EXPIRATION.

(a) If after inspection the dwelling is found to conform with the requirements of this article, the Inspector shall issue a letter of compliance within two working days.

(b) If dwelling units or a duplex or multiple dwelling are not all in compliance, the Inspector may issue a temporary letter of compliance for each dwelling unit conforming to the provisions of this article. A five-year letter of compliance shall be issued for the completed dwelling after the Inspector finds it in compliance with this article.

(c) A copy of the letter of compliance shall be available for inspection at the Inspection Office.

(d) Letters of compliance issued after the effective date of this section shall expire five years from the date of issuance unless sooner revoked under Section 1752.08. In those cases where a temporary letter of compliance is first issued, a letter of compliance issued thereafter shall expire five years from the date the temporary letter of compliance was issued.

(e) The letter of compliance shall include at least: the information contained in the application, the date of inspection, the name of the Inspector, the date of issue, and date of expiration.

If there is a change in ownership, the new owner shall register with the City within thirty days of change of ownership upon such forms as designated by the City. The fee for administrative processing of any such change shall be five dollars (\$5.00).

(f) For multiple dwellings, the Inspector may issue a letter of compliance for the entire dwelling that includes all the required information and that lists the address for each dwelling unit. (Passed 7-12-16.)

1752.08 INSPECTION REPORT; NOTIFICATION; WRITTEN AGREEMENT.

(a) If after inspection a dwelling unit is found in nonconformance with the requirements of this article or a nuisance exists at said dwelling unit, the Inspector shall promptly notify the operator of the reasons for nonconformance or nuisance, which shall be recorded on the inspection report.

(b) Nonconformance or nuisance shall be promptly abated as per time sequence given.

(c) The operator may, within the time period of notice to correct for nonconformance or nuisance, file a petition with the Housing Board of Adjustments and Appeals, depending upon the nature of the violation to appeal the Inspector's order, during which time Section 1752.04(e) shall be stayed.

(d) The letter of compliance shall be denied or revoked if:

- (1) The owner does not file a petition to the Housing Board of Adjustments and Appeals within the time sequences specified by the Inspector.
- (2) The dwelling unit is not in conformance or the nuisance persists at the end of the period specified by the Inspector.

(e) Upon denial or revocation of the letter of compliance, the Inspector shall notify the owner and the occupants in writing.

(f) The dwelling unit shall be provided three free inspections by the Inspector to determine whether the noncompliance has been abated. Additional reinspection shall be made at the rate per dwelling unit or sleeping room as per registration fees indicated in Section 1752.05(d)(1) to (3) and charged to the owner or complainant.
(Passed 7-12-16.)

1752.09 ABATEMENT OF NONCOMPLIANCE OR NUISANCE.

(a) If after inspection the occupant is found in noncompliance with the requirements of this article, or that a nuisance exists the Inspector shall promptly notify the occupant and the operator of the reasons for nonconformance.

(b) If the occupant does not abate the noncompliance within a time set by the Inspector, the Inspector shall proceed against the occupant under Section 1752.04(e).

(c) The dwelling unit shall be provided three reinspections of the nuisance to determine whether the noncompliance or nuisance has been abated. Additional reinspection shall be made at the rate per dwelling unit or sleeping room as per registration fees indicated in Section 1752.05(d)(1) to (3) charged to occupant or complainant.
(Passed 7-12-16.)

1752.10 EMERGENCY ABATEMENT.

(a) If an emergency seems to exist and the occupant cannot obtain prompt relief from the operator, the occupant or other person may ask the Inspector to find that an emergency does exist that constitutes a substantial hazard to the occupant's health and safety.

(b) If the Inspector finds that an emergency exists that cannot be readily and reasonably abated, the dwelling shall be vacated immediately.

(c) If no emergency is found to exist, the Inspector shall proceed under Section 1752.06. (Passed 7-12-16.)

1752.11 APPEALS.

(a) There is hereby established the Housing Board of Adjustments and Appeals, hereafter referred to as the Board, which shall consist of five members. Such Board shall be composed of two tenants, two landlords and one homeowner. The homeowner shall not be a landlord and no member shall be an employee of the City. The Board shall receive staff assistance from existing City employees assigned by the Mayor.

(b) Of the members first appointed, two shall be appointed for terms of one year, two for terms of two years, one for a term of three years, and thereafter they shall be appointed for terms of four years. Any member who is absent from three consecutive meetings shall be removed from office.

(c) Three members of the Board shall constitute a quorum in modifying an order of the Inspector, and the affirmative votes of the majority present shall be required. In varying the application of any provisions of this article, not less than four affirmative votes shall be required. No Board member shall act in a case in which he has a personal interest.

(d) The Board shall establish rules and regulations for its own procedure not inconsistent with the provisions of this article.

(e) Any person who feels aggrieved by any ruling or other official act of the Inspector may, prior to expiration of the time sequence order, petition the Board for a hearing and review of the ruling of the Inspector concerning any matter in issue.

(f) The Board shall, upon receipt of the petition, hold a hearing within fourteen days. At the hearing the petitioner shall be given an opportunity to show cause why the notice or order should be modified or withdrawn.

(g) The Board shall have the power to affirm, modify or revoke the notice or order and may grant variances from the provisions of this article or from applicable rules and regulations issued pursuant thereto when the Board finds that there is practical difficulty or unnecessary hardship connected with the performance of any act required by this article and applicable rules and regulations pursuant thereto, that strict adherence to such provisions would be arbitrary in the case at hand, and that such variance is in harmony with the general purpose of this article to secure the public health, safety and welfare. In no case shall the Housing Board of Adjustments and Appeals act on a request for the modification of the application fee or grant relief from mandatory inspections.

(h) Should such hearing and review before the Board result in a decision adverse to the petitioner, the petitioner may appeal from the decision of the Board to the County Circuit Court, provided that such appeal shall be taken within sixty days from the date of the final decision of the Board.

(i) Should the Board find for the petitioner on an administrative appeal, the appeals fee shall be refunded to the petitioner. (Passed 7-12-16.)

1752.12 STRUCTURES AND UTILITIES.

For the purposes of the time sequence system, the word "day" shall be interpreted as a day which is not scheduled as a holiday or weekend by the City personnel rules and regulation.

(a) Construction. All structural components including foundations or supporting members, interior walls either bearing or non bearing, framing, roofs, floors, ceilings, chimneys or apertures shall be maintained in such condition so as not to jeopardize the intended function for which it was designed, in accordance with the municipal code.

TWENTY DAYS TO CORRECT

(b) Doors and Windows.

(1) Each entrance door to each dwelling unit shall be hinged and lockable. Sliding doors serving as entrance doors shall be lockable.

TWENTY DAYS TO CORRECT

(2) Glass in each door and each window shall be unbroken or in no case have a hole or holes larger than a total of one square inch. Cracked glass shall be replaced if the crack or total cracks exceed a length of four inches per glazed area.

TWENTY DAYS TO CORRECT

(c) Wall and Floor Penetrations. Wall and floor penetrations shall be enclosed or sealed to reduce the spread of fire or passage of vermin.

TWENTY DAYS TO CORRECT

(d) Roofs.

(1) Roof drainage shall be provided to avoid discharge on steps, walkways or entrances.

TWENTY DAYS TO CORRECT

- (2) All building roofs shall be covered with approved materials to make the interior of the building impervious to weather conditions.
TWENTY DAYS TO CORRECT
- (e) Handrails. Handrails or guardrails shall comply with the provisions of the City Code and State Code.
TWENTY DAYS TO CORRECT
- (f) Plumbing and Heating.
- (1) Each apartment shall have:
- A. A permanent and functioning kitchen and bathroom sink for hot and cold water and sanitary drain.
TWENTY DAYS TO CORRECT
- B. A flush water closet located in a room which affords privacy.
TWENTY DAYS TO CORRECT
- C. A bathtub or shower with permanent plumbing for hot and cold water and sanitary drain located in a room which affords privacy.
TWENTY DAYS TO CORRECT
- D. Functioning water heating facilities capable of meeting requirements established by the State and City Code shall be required.
TWENTY DAYS TO CORRECT
- E. Safe heating facilities for the entire living area.
TWENTY DAYS TO CORRECT OR TO PROVIDE ALTERNATIVE SAFE HEATING, EXCEPT DURING THE TIME PERIOD OF SEPTEMBER 15 TO MAY 15 WHICH SHALL BE TWENTY-FOUR HOURS TO CORRECT.
From September 15 to May 15 of the following calendar year, upon the specific written complaint of any tenant that the rental unit is not adequately heated, the Code Enforcement Officer shall inspect the heating facilities within three days of receipt of complaint and, upon inspection, determine if the rental unit conforms to the following standard for adequate heating:
1. As required by the State and City Code.
2. If unable to arrange for inspection of the heating facilities with the owner/operator within the three days, the Housing Inspector shall obtain a search warrant to make the inspection.
- (2) Each boarding house, lodging house and dormitory shall have:
- A. At least one flush water closet, lavatory basin and bathtub or shower in good working condition for each eight occupants or fraction thereof, including the operator's family if they share the use of the facilities.
TWENTY DAYS TO CORRECT
- B. For rooms let only to males, flush urinals may be substituted for not more than one-half of the required water closets.
TWENTY DAYS TO CORRECT
- C. Such facilities shall be located in a room which affords privacy and shall be accessible from a common hall or passageway to all persons sharing the facilities.
TWENTY DAYS TO CORRECT
- D. Safe heating facilities as required in subsection (f)(1)E. hereof.
TWENTY DAYS TO CORRECT

E. Water heating facilities as required in subsection (f)(1)D. hereof.

TWENTY DAYS TO CORRECT

Plumbing and heating equipment for all apartments, boarding houses, lodging houses and dormitories shall comply with all minimum standards of existing codes and ordinances of the City and State.

TWENTY DAYS TO CORRECT UNLESS STATED OTHERWISE IN ANOTHER SECTION OF THIS ARTICLE

(Passed 7-12-16.)

1752.13 ELECTRICAL.

The electrical system of every dwelling unit shall be installed and maintained so as to be safe to the occupants and the structure and comply with City and State Code.

(a) Temporary wiring, flexible or extension cords shall not lie beneath floor coverings, extend through walls, doorways, transoms or similar apertures, or do other than connect one portable electric appliance, as defined by the City and State Code to one convenience outlet.

TWENTY DAYS TO CORRECT

(b) Fuse holders of the Edison-Base type shall be installed only where they are made to accept type S fuses by the use of adapters approved for this purpose. Fuses or circuit breakers shall not exceed the size permitted by the City and State Code.

TWENTY DAYS TO CORRECT

(Passed 7-12-16.)

1752.14 LIGHTING.

(a) The owner shall provide a switched convenience outlet or a light fixture in each habitable room, bathroom, water closet compartment and hallway within the dwelling unit.

TWENTY DAYS TO CORRECT

(b) The owner shall provide light in all public halls, stairways and common entries with a minimum output of one-half foot-candle.

TWENTY DAYS TO CORRECT

(Passed 7-12-16.)

1752.15 PAINT.

(a) No paint containing lead shall be applied in any rental dwelling.

(b) Peeling, blistering or flaking paint containing lead shall be removed or effectively covered.

TWENTY DAYS TO CORRECT

(Passed 7-12-16.)

1752.16 FIRE SAFETY.

(a) Smoke detectors of an approved type shall be provided in all rental housing.

TWENTY DAYS TO CORRECT

(b) Smoke detectors shall be installed in accordance with the provisions of City Code.

TWENTY DAYS TO CORRECT

(c) Every dwelling unit shall be provided with access to not less than two exits remote from each other which exit directly to the outside. Where no more than one means of egress to the outside exists from the second or higher story other than by means of windows and such window is more than ten feet from the ground, a fire escape shall be provided with access from each dwelling unit. The fire escape may be an outside stairway or a metal ladder that is either stationary or one that can be clamped over an open window or a safe alternative providing that there exists no more than one free fall and that the free fall is to the ground level and is no more than ten feet in height.

TWENTY DAYS TO CORRECT

(Passed 7-12-16.)

1752.17 MAXIMUM OCCUPANCY.

Maximum occupancy shall be determined by the requirements of the State Building Code and the City Code.

TWENTY DAYS TO CORRECT

(Passed 7-12-16.)

1752.18 OWNER AND OPERATOR RESPONSIBILITIES.

(a) Maintaining public areas of the premises in a clean and sanitary condition; keeping floors, floor coverings, walls and ceilings reasonably clean and free of rubbish and garbage; and ensuring that stagnant water is not allowed to accumulate or stand anywhere on the premises.

TWENTY DAYS TO CORRECT

(b) Exterminating rodents, insects and other pests when the infestation is caused by failure to maintain the dwelling in a rodent-proof or reasonably insect-proof condition, or whenever the infestation exists in two or more of the dwelling units or in the shared or public parts of the dwelling or premises.

TWENTY DAYS TO CORRECT

(c) Supplying properly sized type S fuse stats at the beginning of each tenancy.

(d) Arranging for the removal of snow and ice from walks, drives and stairs.

(e) Owner shall supply such facilities or containers as are necessary for the sanitary disposal of all garbage and rubbish; owner shall arrange for the removal of all garbage and rubbish from the premises; and owner shall pay all sanitation fees.

(f) Fulfilling the minimum health and safety standards of this article unless specifically stated to be the occupant's responsibility in Section.

(g) Eliminating conditions amounting to a nuisance under this code.

(Passed 7-12-16.)

1752.19 OCCUPANT RESPONSIBILITIES.

Unless the owner has specifically agreed in writing to render such service or to otherwise accept such responsibility, the occupant of a rental unit shall be responsible for:

(a) Notifying the owner or operator and Code Enforcement Officer, in writing, of maintenance needed on the dwelling or supplied equipment or of unsafe or unsanitary conditions not meeting the requirements of this article.

- (b) Keeping all equipment and fixtures in the occupant's dwelling unit clean and in a sanitary condition and exercising reasonable care in the use and operation thereof.
TWENTY DAYS TO CORRECT
- (c) Maintaining smoke detectors, unless other provisions are made with the owner or operator for such maintenance.
TWENTY DAYS TO CORRECT
- (d) Supplying properly sized type S fuse stats, after initial ones are supplied by the owner or operator, as needed during occupancy for those circuits serving only the occupant's dwelling unit.
TWENTY DAYS TO CORRECT
- (e) Disposing of rubbish, garbage and other organic waste in a clean and sanitary manner by placing it in disposal facilities or storage containers and by reclosing or replacing container lids.
TWENTY DAYS TO CORRECT
- (f) Exterminating any insects, rodents or other pests in the dwelling unit for which the occupant is responsible whenever such unit is the only one infested.
TWENTY DAYS TO CORRECT
- (g) Maintaining that part of the dwelling and premises which the occupant occupies in a clean, safe and sanitary manner.
TWENTY DAYS TO CORRECT
- (h) Correction of any damage relating to Sections 1752.12 and 1752.17 caused by willfully or recklessly destructive behavior of the tenant or his/her guests. Any tenant or guest convicted of such willful or recklessly destructive behavior shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00).
(Passed 7-12-16.)

ARTICLE 1755
2015 International Property Maintenance Code

1755.01 Adoption.

1755.01 ADOPTION.
The City of Benwood readopts, as if fully set forth herein, the 2015 International Property Maintenance Code. (Passed 11-10-2020.)