

CODIFIED ORDINANCES OF ELEANOR
PART SEVEN - BUSINESS AND TAXATION CODE

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CHAPTER ONE - Business Regulations

Art. 705. Solicitors.

Art. 709. Yard and Garage Sales.

ARTICLE 705
Solicitors

705.01 Permit required.

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705.03 Requirements for permit.

705.04 Issuance of permit.

CROSS REFERENCES

Solicitation of charitable funds - see W. Va. Code Art. 29-19

Obtaining money by false pretenses - see W. Va. Code 61-3-24 et seq.

Trespass - see GEN. OFF. 533.02

705.01 PERMIT REQUIRED.

No person shall, without a Town permit to do so, station himself in any public place or move about within the Town for the purpose of soliciting money or any other thing of value for any charitable, philanthropic or other purpose, or to solicit or beg alms or charity for himself or for any other person. (Ord. 85-1. Passed 2-7-85.)

705.02 APPLICATION FOR PERMIT.

(a) Any person desiring to procure a Town permit shall apply to Council in writing, and shall state his name and address, his occupation, the purpose for which the permit is sought, the place or places where such solicitation is intended to be made, the period of time during which the solicitation is expected to continue, the arrangements to be made for disposition of the money or other things of value which may be procured by reason for such solicitation, and such detailed information concerning the beneficiaries of such solicitation as may be required by Council, including but not limited to the names and addresses of all officers and directors of a corporate beneficiary and the names, addresses and occupations of noncorporate beneficiaries; the proposed disposition or use to be made by the beneficiaries of all funds received by them; and such other information as Council may require in the interest of safeguarding the public from fraud.

(b) Council shall consider each application for a permit under this section on its merits, and shall grant a public hearing to the applicant if he requests such hearing; and Council shall, in the exercise of sound discretion, grant or deny any permit so applied for. In granting a permit, Council may include therein such conditions as it may deem proper for the convenience and protection of the public, and it shall be unlawful for any permit holder to violate or fail to comply with any condition of his permit. Council may also require, as a condition precedent to the granting of a permit, that the applicant therefor give bond payable to the Town, with corporate surety, in such amount as required by Council, and conditioned upon faithful adherence to all terms and conditions of any permit issued to him under this section; upon turning over to the beneficiary or beneficiaries of his solicitations, as such beneficiary or beneficiaries may be stated in the permit, of all funds solicited and received by him pursuant to his permit; and upon payment by him of any judgement or decree rendered against him for fraud or for misapplication or loss of funds so solicited and received by him. These conditions may be altered in any particular case to protect the public from any risk which appears to Council to be inherent in the case. Prior to granting a permit under this section, Council may refer the application for the permit to the Police Department and to the Town Attorney for an investigation and report, with findings and recommendations.

(c) Nothing in this section shall be construed to require any bona fide church, religious, charitable or other nonprofit organization to obtain a Town permit to conduct a solicitation solely among its own membership.
(Ord. 85-1. Passed 2-7-85.)

705.03 REQUIREMENTS FOR PERMIT.

(a) No person shall go from person to person or from door to door within the Town for the purpose of soliciting orders for books or subscriptions to magazines or other periodicals or publications without first having obtained a permit to do so from the Town Recorder.

(b) Each applicant for a permit under this section shall furnish to the Town Recorder in writing, his full name, age and present residence and business address; the address of each place wherein he has resided during the preceding five years and the name and address of each person by whom he has been an independent contractor during the preceding five years; the name and address of each person or publisher for whom he proposes to solicit sales or subscriptions; a copy of each sales contract or subscription order to be used by him in the course of his transactions under the permit being applied for; and his police record, if any.

(c) Upon the filing of an application for a permit under this section the Town Recorder shall refer it to the Police Department, who shall investigate the applicant's police record, whether or not any reference is made thereto in the application; and the Police Department shall make such further investigation, including inquiries of recognized better business bureaus, credit agencies and other organizations, as may be deemed necessary to determine the applicant's reliability and the reliability of the persons and publishers for whom he proposes to solicit orders and subscriptions to adhere faithfully to the terms of the proposed contracts and subscription orders; and the Police Department shall then confer with the Town Attorney concerning each contract and subscription order form to determine whether they comply with all requirements of State and Federal law. Upon completion of such investigation the Police Department shall return the application to the Town Recorder with his findings and recommendations and the findings and recommendations of the Town Attorney attached thereto.
(Ord. 85-1. Passed 2-7-85.)

705.04 ISSUANCE OF PERMIT.

(a) The Town Recorder shall not issue a permit under this section if the Police Department has determined that the applicant has been convicted of a felony or any misdemeanor involving moral turpitude or that the applicant or any person or publisher for whom he proposes to solicit orders or subscriptions has failed to adhere faithfully to the terms of any contract or subscription order; nor shall the Town Recorder issue any permit under this section if the Town Attorney has determined that any proposed contract or subscription order fails to meet any requirements of State or Federal law.

(b) The Town Recorder shall not issue a permit under this section to any person who is not an actual, bona fide resident of this Town until the applicant has given bond to the Town, secured by an owner of real property within this Town or within Putnam County, or with corporate surety, in the amount of not less than one thousand dollars (\$1,000), conditioned upon the payment of any loss sustained by any person within the Town who signs any contract or subscription order hereunder by reason of any misrepresentation, fraud or failure of the permit holder or the person or publisher for whom he solicits to adhere faithfully to the terms of such contract or subscription order.

(c) No permit issued pursuant to this section shall be construed to relieve the holder thereof from the necessity of procuring any Town license which may be required under any other provisions of this Code or other ordinance of the Town.
(Ord. 85-1. Passed 2-7-85.)

ARTICLE 709
Yard and Garage Sales

709.01 Certificate required.**709.02 Restrictions.**

709.01 CERTIFICATE REQUIRED.

Any person who occupies a residential property within the Town of Eleanor and who does not operate a business under the general ordinances of the Town of Eleanor, may, upon application to the Town Recorder, obtain a certificate authorizing the holding of a sale of their personal goods and merchandise at their home for a period of no longer than three days during any period, said sale commonly called a garage or yard sale.

(Ord. 97-3. Passed 5-1-97.)

709.02 RESTRICTIONS.

- (a) No yard or garage sale may be held on State or Municipal rights of way.
- (b) No person shall be allowed to obtain more than three such permits during any twelve month calendar period.
- (c) There shall be no time period required between permits during any twelve month calendar period.
- (d) In the event inclement weather prevents the holding of the sale on an authorized permit day, the permit may be extended to allow a sale on a fair weather day.
- (e) A fee of one dollar (\$1.00) shall be charged for such certificate.
- (f) The merchandise sold shall not be purchased specifically for resale, but shall be primarily personal belongings of the party holding said sale.
- (g) Two or more parties may combine in application for a permit for such sale.
- (h) Any person violating the terms of this article shall be guilty of a misdemeanor and, upon conviction, be fined not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00) for each day of violation.
- (i) The State Tax Commissioner of West Virginia shall be notified of any convictions under this article.

(Ord. 97-3. Passed 5-1-97.)

ARTICLE 713
Sexually Oriented Businesses

<p>713.01 Purpose and intent.</p> <p>713.02 Definitions.</p> <p>713.03 Classification.</p> <p>713.04 Permit and/or licensed required.</p> <p>713.05 Issuance of permit and/or license.</p> <p>713.06 Fees.</p> <p>713.07 Inspection.</p> <p>713.08 Expiration of permit and/or license.</p> <p>713.09 Suspension.</p> <p>713.10 Revocation.</p> <p>713.11 Transfer of permit and/or license.</p> <p>713.12 Locational restrictions.</p> <p>713.13 Pre-existing locations.</p> <p>713.14 Additional regulations for adult motels.</p>	<p>713.15 Regulations pertaining to exhibition of sexually explicit films or videos.</p> <p>713.16 Exterior portions of sexually oriented businesses.</p> <p>713.17 Signage.</p> <p>713.18 Persons younger than eighteen prohibited from entry; attendant required.</p> <p>713.19 Massages or baths administered by person of opposite sex.</p> <p>713.20 Exemptions.</p> <p>713.21 Notices.</p> <p>713.22 Injunction.</p> <p>713.23 Separability.</p> <p>713.99 Penalty.</p>
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CROSS REFERENCES

Indecency and obscenity - see GEN. OFF. Art. 517

713.01 PURPOSE AND INTENT.

It is the purpose of this Article to regulate sexually oriented business and related activities to promote the health, safety, morals and general welfare of the citizens of the Town of Eleanor, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town. The provisions of this Article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Article to restrict nor deny this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Article to condone or legitimize the distribution of obscene materials.
(Ord. 97-6. Passed 8-7-97.)

713.02 DEFINITIONS.

(a) "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(b) "Adult bookstore or adult video store" means a commercial establishment that, as one of its principal business purposes, offers for sale or rental of any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; and
- (2) Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still categorized as adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas." A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

(c) "Adult cabaret" means a nightclub, bar, restaurant, or similar commercial establishment that regularly features:

- (1) Persons who appears in a state of semi-nudity; or
- (2) Live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- (3) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
- (4) Persons who engage in lewd, lascivious or erotic dancing or performance that are intended for the sexual interests or titillation of an audience or customers.

(d) "Adult motel" means a hotel, motel or similar commercial establishment that:

- (1) Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions; or
- (2) Offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; and
- (3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twenty-four (24) hours.

(e) “Adult motion picture theater” means a commercial establishment where, for any form of considerations, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

(f) “Adult theater” means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or live performances that are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”

(g) “Director” means the Chief of Police and any such employee(s) of the Police Department as he may designate to perform the duties of the director under this article.

(h) “Escort” means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(i) “Escort agency” means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

(j) “Establishment” means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The additions of any sexually oriented business to any other existing sexually oriented business; or
- (4) The relocation of any sexually oriented business.

(k) “Licensed day-care center” means a facility licensed by the State of West Virginia, whether situate with the Town or not, that provides care, training, education, custody, treatment or supervision for four (4) or more children under eighteen (18) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

(l) “Permittee and/or license” means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

(m) “Nude model studio” means any place where a person who appears in a state of nudity or displays “specified anatomical areas” is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

(n) “Nudity” or a “State of nudity” means the appearance of a human bare buttocks, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, of human male genitals in a discernibly turgid state even if completely and opaquely covered.

(o) “Person” means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(p) “Semi-nude” means a state of dress in which clothing covers no more than the human bare buttocks, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered.

(q) “Sexual encounter center” means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

(r) “Sexually oriented business” means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, escort agency, nude model studio, or sexual encounter center.

(s) “Specified anatomical areas” means the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

(t) “Specified sexual activities” means and includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in subsections (t)(1) through (3).

(u) “Substantial enlargement” of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on August 7, 1997.

(v) “Transfer of ownership or control” of a sexually oriented business means and includes any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means, or
- (3) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control. (Ord. 97-6. Passed 8-7-97.)

713.03 CLASSIFICATION.

Sexually oriented business are classified as follows:

- (a) Adult arcades;
- (b) Adult bookstores or adult video stores;
- (c) Adult cabarets;

- (d) Adult motels;
 - (e) Adult motion picture theaters;
 - (f) Adult theaters;
 - (g) Escort agencies;
 - (h) Nude motel studios; and
 - (i) Sexual encounter centers;
- (Ord. 97-6. Passed 8-7-97.)

713.04 PERMIT AND/OR LICENSED REQUIRED.

(a) It shall be unlawful for a person to operate a sexually oriented business without a valid permit and/or license, issued by the Director.

(b) An application for a permit and/or license must be made on a form provided by the Town of Eleanor. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(c) The applicant must be qualified according to the provisions of this article and the premises must be inspected and found to be in compliance with the law by the Health Department, Fire Department and Building Official.

(d) If a person show who wishes to operate a sexually oriented business is an individual, he must sign the application for a permit and/or license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual each individual who has a ten percent (10%) or greater interest in the business must sign the application for a permit and/or license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, each individual having a ten percent (10%) or greater interest in the corporation must sign the application for a permit and/or license as applicant.

(e) The fact that a person possesses other types of state or Town permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business permit and/or license.

(f) Application for a permit, whether original or renewal, must be made to the Director by the intended operator of the enterprise. Applications must be submitted by hand delivery to the office of the Director or the Director's designee during regular working hours. Application forms shall be supplied by the Director. The intended operator shall be required to give the following information on the application form:

- (1) A. The name, street address (and mailing address if different) and West Virginia driver's license number of the intended operator;
- B. The name and street address (and mailing address if different) of the owner(s);
- (2) The name under which the establishment is to be operated and a general description of the services to be provided;
- (3) The telephone number of the establishment;
- (4) The address, and legal description of the tract of land on which the establishment is to be located;

- (5) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the permit is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the permit is sought; and
 - (6) If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the permit). If the expected startup date is to be more than ten (10) days following the date of issuance of the permit, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same.
- (g) The application shall be accomplished by the following:
- (1) Payment of the application fee in full;
 - (2) If the establishment is a West Virginia corporation, a certified copy of the articles of incorporation, together with all amendments, thereto;
 - (3) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state together with all amendments thereto.
 - (4) If the establishment is a limited partnership formed under the laws of West Virginia, a certified copy of the certificate of limited partnership, together with all amendments thereto;
 - (5) If the establishments is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;
 - (6) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed;
 - (7) If the persons identified as the fee owner(s) of the tract of land in item (6) are not also the owners of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the establishment for the purpose of the operation of the establishment;
 - (8) Any of items (2) through (7), above shall not be required for a renewal application if the applicant states that the documents previously furnished the director with the original application or previous renewals thereof remain correct and current.
- (h) The application shall contain a statement under oath that:
- (1) The applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct; and
 - (2) The applicant has read the provisions of this article.
- (i) A separate application and permit shall be required for each sexually oriented business.
- (j) If the establishment is in operation it may remain in operation during the pendency of its application for a permit and/or license under the provisions of this article, inclusive of any period(s) of judicial review of administrative action. (Ord. 97-6. Passed 8-7-97.)

713.05 ISSUANCE OF PERMIT AND/OR LICENSE.

(a) The Director shall approve the issuance of a permit and/or license to an applicant within thirty (30) days after receipt of an application unless he finds one or more of the following to be true:

- (1) An applicant is under eighteen (18) years of age;
- (2) An applicant or an applicant's spouse is overdue in this payment to the Town, the State of West Virginia or the United States Government of taxes, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business.
- (3) An applicant has failed to provide information reasonably necessary for issuance of the permit and/or license or has falsely answered a question or request for information on the application form.
- (4) An applicant is residing with a person who has been denied a permit and/or license by the Town to operate a sexually oriented business within the preceding twelve (12) months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.
- (5) The premises to be used for the sexually oriented business have not been approved by the Health Department or Building Official as being in compliance with applicable laws or ordinances.
- (6) The permit and/or license fee required by this article has not been paid.
- (7) An application of the proposed establishment is in violation of or is not in compliance with any of the provisions of this article.

(b) The permit and/or license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit and/or license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(c) The Health Department, Fire Department and Building Official shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the Director. The certification shall be promptly presented to the Director.

(d) In the event that the Director determines that an applicant is not eligible for a permit, the applicant shall be given notice in writing of the reasons for the denial within forty five (45) days of the receipt of its application by the Director, provided that the applicant may request, in writing, that such period be extended for an additional period of not more than ten (10) days at any time before the notice is issued in order to make modifications necessary to comply with this article.

(e) An applicant may appeal the decision of the Director regarding a denial to Town Council by filing a written notice of appeal with the Town Clerk within fifteen (15) days after the applicant is given notice of the Director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Director may submit a memorandum in response to the memorandum filed by the applicant an appeal to Town Council. After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the Town Council shall vote to either uphold or overrule the Director's decision. Such vote shall be taken within twenty-

one (21) calendar days after the date on which the Town Clerk receives the notice of appeal. However, all parties shall be required to comply with the Director's decision during the pendency of the appeal, unless the establishment is already in operation, in which event the establishment may remain in operation in accordance with this article. (Ord. 97-6. Passed 8-7-97.)

713.06 FEES.

The annual fee for a sexually oriented business permit and/or license is one thousand five hundred dollars (\$1,500.00). This fee is to be used to pay for the cost of the administration and enforcement of this article. (Ord. 97-6. Passed 8-7-97.)

713.07 INSPECTION.

An applicant, or permittee and/or licensee shall permit representatives of the Police Department, municipal, county and state Health Departments, Fire Departments, or other Town or State departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the licensure/permitting and regulatory provisions of this article, at any time it is occupied or open for business. (Ord. 97-6. Passed 8-7-97.)

713.08 EXPIRATION OF PERMIT AND/OR LICENSE.

(a) Each permit and/or license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 713.04. Application for renewal should be made at least thirty (30) days before expiration date; the expiration of the permit and/or license will not be affected.

(b) When the Director denies renewal of a license, the applicant shall not be issued a permit and/or license for one year from the date of denial. If, subsequent to denial, the Director finds that the basis for denial of the renewal permit and/or license has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety (90) days have elapsed since the date denial became final. (Ord. 97-6. Passed 8-7-97.)

713.09 SUSPENSION.

The Director shall suspend a permit and/or license for a period not to exceed thirty (30) days if he determines that a permittee and/or licensee or an employee of a permittee and/or licensee has:

- (a) Violated or is not in compliance with any section of this article;
- (b) Became impaired or intoxicated through the use of alcoholic beverages while on the sexually oriented business premises;
- (c) Refused to allow an inspection of the sexually oriented business premises as authorized by this article;
- (d) Knowingly permitted gambling by any person on the sexually oriented business premises. (Ord. 97-6. Passed 8-7-97.)

713.10 REVOCATION.

(a) The Director shall revoke a permit and/or license if a cause of suspension in Section 713.09 occurs and the permit and/or license has been suspended within the proceeding twelve (12) months.

- (b) The Director shall also revoke a permit and/or license if he determines that:
 - (1) A permittee and/or licensee gave false or misleading information in the material submitted during the application process;

- (2) A permittee and/or licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- (3) A permittee and/or licensee or an employee has knowingly allowed prostitution on the premises;
- (4) A permittee and/or licensee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's and/or licensee's permit and/or license was suspended;
- (5) A permittee and/or licensee or an employee has knowingly allowed an act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the permitted and/or licensed premises;
- (6) A permittee and/or licensee is delinquent in payment to the Town, State or Federal governments for any taxes for fees past due.
- (7) The owner or operator of the permitted establishment knowingly allowed a person under eighteen (18) years of age to enter the establishment; or
- (8) There was a change of owner or operator for which a transfer application was not timely filed.

(c) When the Director revokes a permit and/or license, the revocation shall continue for one (1) year, and the permittee and/or licensee shall not be issued a sexually oriented permit and/or license for one year from the date revocation became effective. If, subsequent to revocation, the Director finds that the basis for the revocation has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety (90) days have elapsed since the date the revocation became effective.

(d) After denial of an application by the Director and Town Council, or denial of a renewal of any application, or suspension or revocation of a permit and/or license by the Director, the applicant or licensee or permittee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court as in extraordinary remedy proceedings.
(Ord. 97-6. Passed 8-7-97.)

713.11 TRANSFER OF PERMIT AND/OR LICENSE.

A permittee and/or licensee shall not transfer his permit and/or license to another, nor shall a permittee and/or licensee operate a sexually oriented business under the authority of a permit and/or license on any place other than the address designated in the application.
(Ord. 97-6. Passed 8-7-97.)

713.12 LOCATIONAL RESTRICTIONS.

Sexually oriented businesses shall be permitted in any areas of the Town provided that:

- (a) The sexually oriented business may not be operated within 1,000 feet of:
 - (1) A church, synagogue or regular place of religious worship;
 - (2) A public or private elementary or secondary school;
 - (3) A boundary of any primarily residential area;
 - (4) A public park;
 - (5) A licensed day-care center; or
 - (6) Another sexually oriented business.

(b) A sexually oriented business may not be operated in the same building, structure or portion thereof, containing another sexually oriented business.

(c) For the purpose of this article, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public park, primarily residential area, residential lot, or licensed day care center.

(d) For purposes of subsection (c) of this section, the distance between any two sexually oriented business uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located. (Ord. 97-6. Passed 8-7-97.)

713.13 PRE-EXISTING LOCATIONS.

(a) Any business lawfully operating on the effective date of this article that is in violation of the locational requirements of this article shall be deemed a pre-existing location. The pre-existing location will be permitted to continue for a period not to exceed two years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such pre-existing location shall not be increased, enlarged, extended or altered except that it may be changed to a nonsexually oriented business. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operating at a particular location is the permissible location and the later-established business(es) is the pre-existing location.

(b) A sexually oriented business lawfully operating as a permissible location is not rendered a pre-existing location by the location, subsequent to the grant or renewal of the sexually oriented business permit and/or license, of a church, synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed day-care center, public park, or primarily residential area within one thousand (1,000) feet of the sexually oriented business. This provision applies only to the renewal of a valid permit and/or license, and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked. (Ord. 97-6. Passed 8-7-97.)

713.14 ADDITIONAL REGULATIONS FOR ADULT MOTELS.

(a) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this article.

(b) It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have a sexually oriented permit and/or license, rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

(c) For purposes of subsection (b) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration. (Ord. 97-6. Passed 8-7-96.)

713.15 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a file, video cassette, or other video reproduction that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (1) Upon application for a sexually oriented business permit and/or license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The Director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (2) The application shall be sworn to be true and correct by the applicant.
- (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Director or his designee.
- (4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situate in each manager's station at all times that any patron is present inside the premises.
- (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction or player equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the manager's station. The view required in this subsection must be by direct line of sight from the manager's station.
- (6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (5) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (a)(1) hereof.
- (7) No viewing room may be occupied by more than one person at any time.
- (8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) foot-candle as measured at the floor level.

- (9) It shall be the duty of the owners and operator, and it shall also be the duty of any agent and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises. (Ord. 97-6. Passed 8-7-97.)

713.16 EXTERIOR PORTIONS OF SEXUALLY ORIENTED BUSINESSES.

(a) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(b) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portions of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this article.

(c) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

- (1) The establishment is a part of a commercial multi-unit center; and
- (2) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(d) Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business. (Ord. 97-6. Passed 8-7-97.)

713.17 SIGNAGE.

(a) Notwithstanding any other town ordinance, code, or regulation to the contrary, it shall be unlawful for the owner or operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than one (1) primary sign and one (1) secondary sign, as provided herein.

(b) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

- (1) Not contain any flashing lights;
- (2) Be a flat plane, rectangular in shape;
- (3) Not exceed seventy-five (75) square feet in area; and
- (4) Not exceed ten (10) feet in height; ten (10) feet in length; nor ten (10) feet in height distance from the ground to the lowest or bottom portion of the sign.

(c) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

(d) Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

- (e) Secondary signs shall have only one (1) display surface. Such display surface shall:
- (1) Be a flat plane, rectangular in shape;
 - (2) Not exceed twenty (20) square feet in area;
 - (3) Not exceed five (5) feet in height and four (4) feet in width; and
 - (4) Be affixed or attached to any wall or door of the enterprise.

(f) The provisions of item (1) of subsection (b) and subsection (c) and (d) hereof shall also apply to secondary signs. (Ord. 97-6. Passed 8-7-97.)

713.18 PERSONS YOUNGER THAN EIGHTEEN PROHIBITED FROM ENTRY; ATTENDANT REQUIRED.

(a) It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time that the sexually oriented business is open for business.

(b) It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented business' regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished:

- (1) A valid operator's, commercial operator's or chauffeur's driver's license; or
- (2) A valid personal identification certificate issued by the State of West Virginia reflecting that such person is eighteen (18) years of age or older. (Ord. 97-6. Passed 8-7-97.)

713.19 MASSAGES OR BATHS ADMINISTERED BY PERSON OF OPPOSITE SEX.

It shall be unlawful for any establishment, regardless of whether it is a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex. (Ord. 97-6. Passed 8-7-97.)

713.20 EXEMPTIONS.

It is a defense to prosecution under this article that a person appearing in a state of nudity did so in a modeling class operated:

- (a) By a proprietary school licensed by the State of West Virginia; a college, junior college, or university supported entirely or partly by taxation.
- (b) By a private college or university that maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation. (Ord. 97-6. Passed 8-7-97.)

713.21 NOTICES.

(a) Any notice required or permitted to be given by the Director or any other Town office, division, department or other agency under this article to any applicant, operator or owner of an establishment may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the

application for the permit, or transfer application that has been received by the Director, or any notice of address change that has been received by the Director. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the Director or his designee shall cause it to be posted at the principal entrance to the establishment.

(b) Any notice required or permitted to be given to the Director by any person under this article shall not be deemed given until and unless it is received in the office of the Director.

(c) It shall be the duty of each owner who is designated on the permit application and each operator to furnish notice to the Director in writing of any change of residence or mailing address. (Ord. 97-6. Passed 8-7-97.)

713.22 INJUNCTION.

A person who operates or causes to be operated a sexually oriented business without a valid permit and/or license or otherwise violates this Article is subject to a suit for injunction as well as prosecution for criminal violations as provided herein, all in addition to the suspension and revocation powers of the Director for noncompliance with the provisions of this article. (Ord. 97-6. Passed 8-7-97.)

713.23 SEPARABILITY.

If any section, subsection, or clause of this Article shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby. (Ord. 97-6. Passed 8-7-97.)

713.99 PENALTY.

Whoever violates any provision of this article shall in addition to any other actions which may be taken by the Director hereunder, be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than thirty (30) days, or both. (Ord. 97-6. Passed 8-7-97.)

CHAPTER THREE - Taxation and Service Charges

- Art. 717. License Taxes.
- Art. 721. Business and Occupation Tax.
- Art. 727. Intoxicating Liquor Tax.
- Art. 729. Public Utility Tax.
- Art. 733. Wine Dealers.
- Art. 737. Reciprocal Exchange of Tax Information.

ARTICLE 717
License Taxes

- | | |
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| <ul style="list-style-type: none"> 717.01 Definitions. 717.02 License required. 717.03 Application for license; payment of tax; records. 717.04 False statements prohibited. 717.05 Separate license required. 717.06 Expiration date; annual renewal; proration of tax and fees. 717.07 Display of license. 717.08 License not assignable; change of name, location, ownership, etc. 717.09 Unlawful acts. 717.10 Suspension and revocation of licenses; appeals. 717.11 Criminal violations and penalties. 717.12 Prosecution for violations; injunctions. | <ul style="list-style-type: none"> 717.13 Business not otherwise licensed. 717.14 Coin operated devices. 717.15 Washing, cleaning and dry cleaning devices. 717.16 Corporations. 717.17 Hawkers and peddlers. 717.18 Hotels, motels, boardinghouses. 717.19 Junk dealers; itinerant junk collectors. 717.20 Theaters and theatrical exhibitions. 717.21 Stores. 717.22 Restaurants. 717.23 Administrative costs; payments into Town Treasury. 717.24 Payment under protest; remedies. License Fee Schedule. |
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CROSS REFERENCES

Authority to tax - see W. Va. Code 8-13-4, 11-12-4

717.01 DEFINITIONS.

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

- (a) "Business" means any economic activity, whether a person engaged expressly or impliedly holds himself out as engaged in business or supplying his products or a commodity or service to the public as a class or a limited portion of the public or sells any goods, wares, merchandise of any kind or provides a service of any kind; provided, the "business" shall not include sales of products of the farm, garden or dairy by the producer or grower thereof; occasional sales by societies acting for charitable, religious, or benevolent purposes; judicial sales directed by law or court order; or any business the gross income of which is less than one thousand dollars (\$1,000) per license year and, in this connection, "gross income" shall mean the gross receipts of the business received as compensation for personal services and from trade, commerce or sales and the value accruing from the sale of tangible property (real or personal), or service or both, without any deduction on account of the cost of property sold, materials used, labor costs, taxes or any other expense whatsoever.
- (b) "Business franchise certificate" means a franchise or certificate, issued by or in behalf of the State, authorizing a person to conduct business within the State of West Virginia and when referred to in this article a certificate or registration shall mean business franchise registration certificate.
(Ord. 97-1. Passed 5-15-97.)

717.02 LICENSE REQUIRED.

It shall be unlawful for any person to conduct within the Town of Eleanor, any business, profession, calling or vocation for which a Town license is required by this article or elsewhere in the other titles or for which a business franchise registration certificate or any other form of State license is required by law without first obtaining from the Town of Eleanor such Town license as may be required therefor, and each person so licensed by the Town of Eleanor shall pay such Town license tax or fee as may be imposed thereon by the Town and maintain such Town license in a currently valid status at all times while conducting business, profession, calling or vocation to which such Town license relates.

(Ord. 97-1. Passed 5-15-97.)

717.03 APPLICATION FOR LICENSE; PAYMENT OF TAX; RECORDS.

(a) Each applicant for a Town license shall make application to the Recorder, on a form to be provided by the Town of Eleanor, and holders of business franchise registration certificates or other forms of State licenses authorizing them to do business within the Town shall display such State certificates or licenses to the Recorder at the time of making application for a Town license.

(b) Upon payment to the Recorder of such license tax or fee as may be imposed by this article or elsewhere in the other titles for the particular Town license for which application is made, the Recorder shall issue the license applied for; provided that the application is in proper form and that all requirements of State law and the other titles appear to the Recorder to have been complied with, and provided further, that applications for licenses which are required to be issued by Council shall be referred by the Recorder to Council at its next meeting succeeding the date of filing thereof, and he shall not issue any such license until authorized to do so by Council, and in any such case the payment of any license tax or fee shall be deferred until such application has been approved by Council.

(c) The Recorder shall maintain on file all applications for Town licenses and a record of each license issued which shall set forth the name and business address of the licensee, the date of issuance and the term for which issued, the type of license, the amount of license tax or fee paid, the number of the license, and such additional information as may be pertinent to establish that all requirements of law and this article have been complied with.
(Ord. 97-1. Passed 5-15-97.)

717.04 FALSE STATEMENTS PROHIBITED.

It shall be unlawful for any person to knowingly make any false statement in any application for the Town license, or in any tax return, report or other statement relating to any activity licensed by the Town and which is required to be made to any officer or agency.
(Ord. 97-1. Passed 5-15-97.)

717.05 SEPARATE LICENSE REQUIRED.

Except as may be provided otherwise, any person who, at more than one fixed place of business within the Town of Eleanor engages in or prosecutes any business, profession, calling or vocation for which a Town license is required, or who within the Town of Eleanor engages in or prosecutes more than one type of business, profession, calling or vocation for which a Town license is required, shall obtain a separate license and pay the prescribed tax or fee therefor for each such fixed place of business and for each such business, profession, calling or vocation.
(Ord. 97-1. Passed 5-15-97.)

717.06 EXPIRATION DATE; ANNUAL RENEWAL; PRORATION OF TAX AND FEES.

(a) Town licenses shall expire at midnight on the last day of June subsequent to the date of issuance and shall be renewable annually, except such licenses for which the tax or fee is by the day, week, month or other period less than a year, and except as may be provided otherwise.

(b) The license tax or fee for an initial license upon the commencement of business shall be prorated in the following manner. All licenses granted prior to January 1 shall be charged the full amount of such license tax or fee and all licenses granted after January 1 shall be charged one half of the full license tax or fee. No license, however, shall be issued for less than two dollars (\$2.00).
(Ord. 97-1. Passed 5-15-97.)

717.07 DISPLAY OF LICENSE.

Each person to whom a Town license has been issued shall keep such license conspicuously posted upon or within the premises to which such license relates. Each licensee having no fixed place of business shall carry his license upon his person at all times while engaging in the licensed business or any transaction incidental thereto, and shall display such license upon request of any person with whom he is transacting business or any law enforcement officer.
(Ord. 97-1. Passed 5-15-97.)

717.08 LICENSE NOT ASSIGNABLE; CHANGE OF NAME, LOCATION, OWNERSHIP, ETC.

(a) Each Town license shall confer a personal privilege only, to transact the business, profession, calling or vocation which is the subject of the license, and shall not be exercised except by the person holding the same and shall not be assignable to any other person.

(b) Changes in the name of the person or change of location, or address, or changes in ownership of the business or changes in real parties of interest shall be considered a cessation of the business and a new Town license shall be required. Changes of partners or members of firms or officers of a corporation shall not require a new license to be issued.
(Ord. 97-1. Passed 5-15-97.)

717.09 UNLAWFUL ACTS.

Nothing in this article and no payment for or issuance of any Town license under the provisions hereof, shall be deemed to legalize any act which otherwise may be in violation of law, or to exempt any person from penalty prescribed for such violation.
(Ord. 97-1. Passed 5-15-97.)

717.10 SUSPENSION AND REVOCATION OF LICENSES; APPEALS.

The Recorder, upon reasonable notice to the licensee, may summarily revoke any license issued by him for any reason which would have been grounds for denial of such license when first issued, for violation of any term or condition of such license, for violation of any pertinent provision of state law or other ordinances, or for the perpetration or attempted perpetration of fraud, malpractice, or malfeasance by the licensee, without prejudice to prosecution of such licensee by the Town of Eleanor. Any person having an interest in any license so revoked and who feels aggrieved thereby may request the Recorder to further investigate the grounds for revocation and to reconsider his action, and if the Recorder accedes to such request he may suspend or reinstate the license pending his final decision. If the Recorder refuses to accede to such request, or if, upon reconsideration, he affirms his revocation of the license, the party so aggrieved may appeal to the Eleanor Town Council, which shall, without delay, afford such person a public hearing at which he may appear in person or by counsel, and may have the attendance of witness, books, and papers in his behalf, and may testify in person. The decision of the Eleanor Town Council following such hearing shall be final, subject only to such judicial review as may be provided by law.
(Ord. 97-1. Passed 5-15-97.)

717.11 CRIMINAL VIOLATIONS AND PENALTIES.

Except as may herein be expressly provided, any person violating any provisions under this article shall, upon conviction thereof, be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00), or imprisoned in the County Jail not more than thirty days or both fined and imprisoned, and each day or part thereof that any violation shall continue shall be deemed to constitute a distinct and separate offense and be punishable accordingly.
(Ord. 97-1. Passed 5-15-97.)

717.12 PROSECUTION FOR VIOLATIONS; INJUNCTIONS.

If any person engages in or prosecutes any business, profession, calling or vocation contrary to any of the provisions of this article, or by any violation of the terms and conditions of such license, he shall be subject to immediate prosecution.
(Ord. 97-1. Passed 5-15-97.)

717.13 BUSINESS NOT OTHERWISE LICENSED.

Every person engaging in any business, profession, calling or vocation in the Town of Eleanor, for which a State business franchise registration certificate is required and for which no other Town license tax or fee is prescribed in this article or in other titles, and which is not exempted from the payment of any Town license tax or fee by State law, or other titles shall obtain annually a Town license therefor and shall pay to the Town of Eleanor, an annual license tax of fifteen dollars (\$15.00) for each location within the Town where he holds himself out to engage in or transact business therefrom.

(Ord. 97-1. Passed 5-15-97.)

717.14 COIN OPERATED DEVICES.

(a) Persons owning and operating coin operated merchandise, service, amusement or music devices or vending machines shall obtain annual licenses and pay the fees prescribed in this section on or before July 1 of each year.

(b) The liability for the license to operate any type of coin operated merchandise, service, amusement or music devices or vending machines shall be upon the owner of the machine. The ownership shall be established by either a bill of sale, paid invoice or a conditional sales contract which has been recorded in an applicable County Clerk's office. The leasing of such machine shall not be considered as a transfer of ownership of the machine and where a lessor-lessee relationship exists, the lessor shall be liable for the application license and fees.

(c) The annual license fee to own and operate a coin operated baggage or parcel checking machine or device which is used for the storage of baggage or parcels of any character, shall be fifty cents for each section of any such device which is operated on the coin-in-the-slot principle; the annual license fee to own and operate any coin operated toilet locker or device, sanitary napkin device or bed vibrator device shall be fifty cents for every such locker or device. The Town of Eleanor will not furnish decal stamps for these devices; however, the owner shall identify each machine by installing on each device an identification label, plainly legible and visible, in such a manner that the machine need not be moved to observe the identification label, and the identification label shall contain the name of the owner, his Town license number, his street address and name of Town and State of residence.

(d) The annual license fee to own and operate of total of twenty or more coin operated amusement or music devices of the following types shall be: One cent devices: fifty dollars; five cent devices: One hundred dollars; ten cent devices: One hundred fifty dollars; over ten cent devices: Two hundred fifty dollars. The operator of more than one type of such device shall pay the highest fee prescribed. The license fee to own and operate less than twenty amusement or music devices shall be upon a per device basis as follows: one cent devices: Two dollars; five cent devices: Five dollars; ten cent devices: Ten dollars; over ten cent devices: twelve dollars and fifty cents. Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of the coins necessary to make the device function or operate.

(e) The annual license fee to own and operate a total of twenty or more coin operated merchandise or service devices of the following types shall be: one cent devices: Fifty dollars; five cent devices: One hundred dollars; ten cent devices: One hundred fifty dollars; over ten cent devices: Two hundred fifty dollars. The operator of more than one type of such device shall pay the highest fee prescribed. The license fee to own and operate less than twenty merchandise or service devices shall be upon a per device basis as follows:

One cent devices: Two dollars; five cent devices: Five dollars; ten cent devices: Ten dollars; over ten cent devices: Twelve dollars and fifty cents. Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of the coins necessary to make the device function or operate.

(f) The fees herein prescribed are on an annual basis, commencing July 1 of each year, expiring on the following June thirtieth, and are not pro-ratable if taken out during the license year nor shall fees paid be refundable if a license is revoked, suspended or business ceased during the license year.

(g) No license fee shall be required of stores or businesses owning and operating such machines or devices owned by them in their owned licensed stores; provided, that where the principal business is the operation of the machines or devices, then licenses shall be obtained as outlined above; and provided further, that any person exempt or not liable for such license shall identify each machine by installing on each device an identification label, plainly legible and visible, in such a manner that the machine need not be moved to observe the identification label and the identification label shall contain the name of the owner, his store license number, his street address and name of Town and state of residence.

(h) The provisions of this section shall not be applicable to any pay telephone, postage stamp vending machines or currency changing machines operated on the coin-in-the- slot principle.

(i) Application for license required herein shall contain the necessary information for the proper licensing under the foregoing fee schedule for machines that are owned and operated on location by the licensee within the Town of Eleanor during the ensuing license year or any part of a fiscal year. Each vending machine operator shall make application to the Recorder on forms provided by him, and the applicant shall furnish such information as may be required by the Recorder including a certified statement of the total number of machines, by location, of each coin denomination type in each classification, vis., service, music or amusement, and merchandise or service machines; provided, that vending machine operators operating twenty or more machines are only required to furnish the Recorder with a certified statement as to the total number of machines on location in the Town of Eleanor, and the applicant shall be subject to the penalties of false swearing for any untrue statements contained in his application.

(j) The Recorder shall assign each license issued hereunder a number. It shall be the responsibility and duty of the owners of all coin operated devices subject to the licenses herein provided to properly identify each machine by installing on each device an identification label, plainly legible and visible, in such a manner that the machine need not be moved to observe the identification label, and the identification label shall contain the name of the owner, his license number, his street address and the name of Town and state of residence.

(k) In the event any coin operated device is found on location and not bearing the owner's address and current license number as prescribed above, the Recorder or his agents may seal the device in such a manner as to make it inoperable. The seal shall state the date sealed and bear the signature and title of the sealer. Anyone other than the Recorder or his authorized agent who shall break or tamper with such seals, or conceal or move a sealed machine from its location shall be subject to the criminal provisions of this article.

(l) The owner of a sealed machine may petition the Recorder to remove seal(s) from owner's machine(s) by filing a petition, on forms provided by the Recorder, and paying to the Town Treasurer a sealing fee of ten dollars (\$10.00) for each sealed machine. After receiving such petition and fee, and after the owner has complied with all the applicable provisions of this article, the Recorder shall, within a reasonable time, cause such petition seals to be removed. If the owner of the sealed device has not, within thirty days from the date the device was sealed, paid a sealing fee of ten dollars to the Treasurer as well as having, to the satisfaction of the Recorder, complied with all other applicable provisions of this article, then and in which event, the Recorder, or his agents shall take such sealed device into possession and deliver the same to the police upon direction of the Recorder shall take such device into possession and forthwith sell such sealed device in the manner provided by law for the sale of personal property for taxes; and from the proceeds of sale, including any currency found in the sealed machine and removed prior to sale, shall pay his costs, including drayage, storage, penalties and other fees due the Town of Eleanor; and the balance, if any there be, shall be paid to the Town Treasurer for deposit and credit in the same manner as are the license fees collected under this section.

(m) Every person subject to the provisions of this article shall make such reports and keep such records as may be required by the rules and regulations of the Recorder and shall permit him to inspect such records and the stocks and supplies on hand at any time. Every such person shall be required to make his records available for inspection by the Recorder or his authorized agents.

(n) The Recorder is hereby authorized to make and promulgate such reasonable rules and regulations as may be necessary to administer the provisions of this section and other sections of this article which relate to coin operated devices to insure the collection of the taxes imposed thereby. (Ord. 97-1. Passed 5-15-97.)

717.15 WASHING, CLEANING AND DRY CLEANING DEVICES.

(a) Coin operated devices which wash, dry, clean or dry clean items of any description exclusive of vehicle washing devices but including clothing and household items, or dispense merchandise for use in such washing, drying, cleaning, or dry cleaning, are hereby subject to a license tax.

(b) All persons owning the aforementioned devices, or like washing devices, shall be liable for payment of such license tax. Ownership shall be deemed established by determining who is the purchaser by either a bill of sale, paid invoice, or a conditional sales contract or agreement filed and recorded in the applicable County Clerk's office in this State or in the office of the Secretary of State. Leasing of machines will not be deemed a transfer of ownership.

(c) The annual license fee to own machines being operated in this Town and whether operated by the owner or other persons shall be as follows: Upon ten or more machines, in any one location, the annual license fee shall be fifteen dollars (\$15.00). Upon less than ten machines, in any one location, the annual license fee shall be three dollars (\$3.00) for each machine; provided, that in no instance shall the annual license fee be less than fifteen dollars (\$15.00). (Ord. 97-1. Passed 5-15-97.)

717.16 CORPORATIONS.

Every domestic and foreign corporation whose principal place of business or chief works are located in the Town of Eleanor, shall pay an annual Town license tax of fifteen dollars (\$15.00); but this section shall not be construed as imposing a tax on corporations chartered strictly for educational, literary, agricultural, religious, cemetery or charitable purposes, or upon charters incorporating Masonic Lodges, Odd Fellows Lodges, or other charitable or beneficiary societies. (Ord. 97-1. Passed 5-15-97.)

717.17 HAWKERS AND PEDDLERS.

(a) When used in this section the terms "hawker" and "peddler" means and includes all persons who engage or conduct, within the Town of Eleanor, in traveling from place to place within the state, a temporary or transit business of selling goods, wares or merchandise for delivery at the time of sale, and who, for the purpose of carrying on such business may use, lease, or occupy either in whole or in part, a shed or sheds, open ground, streets, roads or highways, a room, building or other structure or who use, lease or occupy for such purpose a room in any hotel or lodging house, for the exhibition and sale of goods, wares, and merchandise; or any person who shall carry goods, wares, or merchandise from place to place on foot or with a vehicle, either in person or by agent or employee, and sell, for delivery at the same time, any goods, wares, or merchandise to any purchaser at wholesale or retail, and any person who shall solicit for the purpose of rendering any service shall be deemed a hawker and peddler under this section. The person so engaged shall not be relieved from the provisions of this section by reason of association temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as part of the business of, or in the name of any local dealer, trader, merchant or auctioneer.

The annual license fee to act as a hawker and peddler, if the person licensed travels without a vehicle, shall be ten dollars; if he travels with a vehicle the annual license fee shall be fifteen dollars (\$15.00); and the person licensed shall pay at the same rate for each and every vehicle used. Such person shall carry his license in some conspicuous place in his vehicle or about his pack.

(b) The provisions of this section shall not apply to any person who sells any goods, wares, or merchandise to be delivered in the future; or to any of the following who offer immediate delivery of the goods, wares, or merchandise being sold:

- (1) Any person or persons engaged within this State in the business or calling of agriculture, horticulture or grazing, who sells or sell individually or collectively, one or more for the other or others, the products derived from his or their business or calling aforesaid.
- (2) Any retail or wholesale business concern, established and operating continuously for one year or more within the State in the sale of any product or products over regular routes who are licensed under other provisions of this article.
- (3) Any wholesaler or jobber selling soft drinks or nonintoxicating beer for which he is duly licensed under other provisions of this or another article.
- (4) Any person who sells petroleum products, ice, wood, meat, ice cream, dairy products, bread, cakes, pies and other bakery products, butter and eggs, manufactured, grown or produced by any such person and not purchased by him for resale.
- (5) Sales made to persons by commercial travelers, or selling agents in the usual course of business, not to bona fide sales of goods, wares or merchandise by sample for future delivery; nor to any sales of goods, wares or merchandise on the grounds of any agricultural association during the continuance of any annual fair held by such association, nor to any sales by organizations acting for charitable, religious or benevolent purposes; nor to annual showings or street exhibits, which may include sales of their showings or exhibits conducted by members of art associations; numismatic or philatelic societies or antique associations or societies when such showings or exhibits do not continue for more than one week each year; not to judicial sales directed by law, or under the orders of any court.
- (6) Any agent or salesman selling manufactured products produced by his employer, and who sells the same to retail dealers for the purpose of resale.
- (7) Any firm, corporation, or individual having a stock of goods, or merchandise, or manufacturing or processing plant or plants kept or operating at a fixed site in the State of West Virginia, and declared for taxation in the county where located, and using a vehicle or vehicles over a fixed route or routes for the purpose of selling or distributing at wholesale, their, his or its said merchandise, stock of goods or plant products.

(c) Any person who is exempt from the payment of any license fee under this section, as above provided, shall obtain from the Recorder, a license receipt, without cost, showing that he is so exempt, and which shall run a period of one year after the issuance thereof; but to obtain such license receipt he shall make an affidavit as to the facts entitling him to such exemption on a form to be prescribed by the Recorder.

(d) Any licensed hawker or peddler who shall be guilty of any fraud, cheating or misrepresentation, whether through himself or through an employee, while acting as a peddler in the Town of Eleanor, or who shall barter, sell, or peddle any goods or merchandise, or wares other than those specified in his application for a license shall be deemed guilty of a violation of this section. (Ord. 97-1. Passed 5-15-97.)

717.18 HOTELS, MOTELS, BOARDINGHOUSES.

Any person engaging in the business of providing the accommodations or services of a hotel, motel, inn, tourist home, rooming house, boardinghouse, or other establishment where lodging is furnished for compensation shall pay an annual Town license tax of two dollars, and twenty-five cents additional for each bedroom in excess of seven, but no fee shall exceed ten dollars. (Ord. 97-1. Passed 5-15-97.)

717.19 JUNK DEALERS; ITINERANT JUNK COLLECTORS.

(a) Any person engaging in the business of junk dealer shall pay an annual Town license tax of twenty-five dollars; and any person engaged in business as a junk dealer's agent shall pay an annual Town license tax of ten dollars; provided, that any person who is a nonresident of the State who engages in the business of junk dealer or junk dealer's agent shall pay an annual Town license tax of one hundred fifty dollars (\$150.00). Any person engaged in the business of itinerant junk collector shall pay an annual Town license tax of two dollars.

(b) The term “junk” as used in this section shall mean old scrap gold, copper, brass, rope, rags, batteries, paper, rubber, automobile parts, iron, steel, and other old scrap ferrous or nonferrous metals. The term “junk dealer” shall include any person engaged in the business of buying or selling junk as hereinabove defined. The term “junk dealer's agent” shall include any person who buys or sells junk as hereinabove defined, but the term “junk dealer's agent” shall not be construed to include any person regularly employed upon a salary by a regularly licensed junk dealer engaged in such business within the Town of Eleanor. The term “itinerant junk collector” shall include only such persons who gather junk from place to place with the aid of a cart or hand drawn or propelled vehicle, who have no fixed place of business.
(Ord. 97-1. Passed 5-15-97.)

717.20 THEATERS AND THEATRICAL EXHIBITIONS.

Any person engaging in the business of public shows, theatrical exhibitions, exhibiting motion pictures, hypnotic exhibitions and other performances to which admission obtained by the payment of money or other consideration shall pay an annual Town license tax of fifteen dollars.
(Ord. 97-1. Passed 5-15-97.)

717.21 STORES.

(a) For the purpose of this section, the term “special store” shall mean and include any store or any mercantile establishment in which goods, wares, or merchandise of any kind, except cigarettes, tobacco products or soft drinks, are purchased, ordered, sold, or offered for sale, either at retail or wholesale, and which contains no coin operated device(s) owned and operated by the store proprietor. The term “general store” shall mean and include any store(s) or any merchandise establishment(s) in which goods, wares, or merchandise of any kind are purchased, ordered, sold, or offered for sale either retail or wholesale. Within this section, no coin operated device or devices shall be construed to be a store.

(b) Every person establishing, operating, or maintaining one or more general stores within the Town of Eleanor under the same general management, supervision, or ownership shall pay an annual license tax of fifteen dollars per store. Every person establishing, operating, or maintaining one or more special stores within the Town of Eleanor under the same general management, supervision or management shall pay an annual license tax of five dollars per store.

(c) The establishment, operation, or maintenance of stores by the following shall be exempt from the license fee imposed by this article:

- (1) The United States of America, the State of West Virginia, and its political subdivisions.
- (2) Religious and charitable organizations.
- (3) Any person(s) engaged within the Town of Eleanor in the business of producing agricultural products who individually or collectively, sell in such store only agricultural products which he or they have produced.
(Ord. 97-1. Passed 5-15-97.)

717.22 RESTAURANTS.

The annual license tax to operate a restaurant shall be two dollars and twenty-five cents for each five chairs or stools, or spaces where persons are fed, in excess of ten, but no fee shall exceed ten dollars. (Ord. 97-1. Passed 5-15-97.)

717.23 ADMINISTRATIVE COSTS; PAYMENTS INTO TOWN TREASURY.

Any and all expenses incurred by the Recorder in the administration of this article shall be paid out of the General Fund. All monies collected under the provisions of this article shall be paid into the Town of Eleanor Treasury by the Recorder and shall be added to and constitute a part of the General Fund. (Ord. 97-1. Passed 5-15-97.)

717.24 PAYMENT UNDER PROTEST; REMEDIES.

Any person claiming that any license is not due, for any reason, shall pay the tax under protest, with the right to collect the same from the Town Treasury by an appropriate remedy as provided by law. (Ord. 97-1. Passed 5-15-97.)

LICENSE FEE SCHEDULE

<u>Amusement or Music Devices</u>	<u>WV Code Section</u>
	11-12-3
Less than 20	
One Cent Devices	\$2.00 Each
Five Cent Devices	5.00 Each
Ten Cent Devices	10.00 Each
Over Ten Cent Devices	12.50 Each
More than 20	
One Cent Devices	50.00
Five Cent Devices	100.00
Ten Cent Devices	150.00
Over Ten Cent Devices	250.00
Baggage or parcel checking devices, vibrator machines and toilet lockets, sanitary napkins	11-12-3 .50 Each

LICENSE FEE SCHEDULE (Cont.)

<u>Carnivals (street or other)</u>		11-12-4
* For each performance, exhibit or entertainment	5.00 per week	
* Riding Devices	10.00 per week	
* Concessions selling services, goods, wares, merchandise and food	5.00 per week	
* Games of Skill	10.00 per week	
* Candy or Merchandise Wheels	25.00 per week	
** Each performance shall be required to have a separate license. **		
<u>Circuses and Other Shows</u>		11-12-4
For each railroad car used to transport property or equipment	4.00 per day	
For each truck used to transport property or equipment	3.00 per day	
<u>Collection Agency</u>	100.00	11-12-12
<u>Employment Agency</u>	200.00	11-12-13
<u>Fortune Telling, Palmist, Phrenologist, Spiritualist, Clairvoyant, Mind Reader, Medium</u>	200.00	11-12-6
<u>Hawker and Peddler</u>		11-12-8
On foot	10.00	
By vehicle	15.00	
<u>Itinerant Vendors</u>	15.00	11-12-10

LICENSE FEE SCHEDULE (Cont.)

<u>Junk Dealers</u>		11-12-7
Resident junk dealer within Town limits	\$25.00	
Resident junk dealer (no yard for storing)	25.00	
Resident junk dealer's agent	10.00	
Itinerant junk collector	2.00	
Nonresident junk dealer	150.00	
Nonresident junk dealer's agent	150.00	
<u>Laundromats - Car Wash</u>	\$3.00	11-12-3a
Not to exceed	15.00	11-13a-2
<u>Pawnbroker</u>	100.00	11-12-9
<u>Theaters and Public Shows</u>		11-12-11
Over 2,000	15.00	
Less than 2,000	10.00	
<u>Trading Stamps (each country)</u>	175.00	11-12-5
<u>Vending Machines, Merchandise or Service Devices</u>		11-12-3
<u>Less than 20</u>		
One Cent Devices	2.00 Each	
Five Cent Devices	5.00 Each	
Ten Cent Devices	10.00 Each	
Over Ten Cent Devices	12.50 Each	
<u>More than 20</u>		
One Cent Devices	50.00	
Five Cent Devices	100.00	
Ten Cent Devices	150.00	
Over Ten Cent Devices	250.00	

LICENSE FEE SCHEDULE (Cont.)

** If the license granted is for a period less than the fiscal year, the fee shall be computed quarterly in proportion to the remainder of the fiscal year. **

General Stores

1 to 5 stores \$15.00 Each

Special Stores

1 to 5 stores 5.00 Each

In addition to Business licensed under the General or Special Classifications:

Alcoholic Beverages:

1.	<u>Alcoholic Liquors:</u>		
	Fraternal or Veterans Organizations or Nonprofit social club	375.00	60-7-6
	Private Club		
	Less than 1000 members	500.00	60-7-6
	1000 or more members	1250.00	60-7-6
2.	<u>Nonintoxicating Beer:</u>		
	Retail Dealer - Class A Restaurants, bars and fraternal organizations	150.00	11-16-9
	Class B (Grocery Stores) (Chilled and Unchilled)	150.00	11-16-9
	Distributor	1000.00	11-16-9
	Brewer	1500.00	11-16-9

3.	<u>Wine.</u>		
	Retailers (grocer)	\$150.00	60-8-3
	Distributors	2500.00	60-8-3
	Each additional facility	2500.00	60-8-3
	Wine Tasting	50.00	60-8-3
	Wine Sales Representative	50.00	60-8-3
	Private wine restaurant	250.00	60-8-3
	<u>Other Activities</u>		
	Accountants	5.00	30-1-7
	Attorney	5.00	30-1-7
	Foresters	5.00	30-19-7
	Hotels, Motels and Boarding Houses	2.00	16-6-4
	Each room in excess of 7	.25 Each up to \$10.00	
	Midwives	10.00	30-15-5
	Occupational Therapist	5.00	30-28-15

LICENSE FEE SCHEDULE (Cont.)

Practical Nurses	\$5.00	30-7A-7
Radiological Technologist	10.00	30-23-7
Residential Board and Care Home	2.00/bed	16-5C-6
Restaurants	2.00	16-6-4
a. Each five chairs or spaces where persons are fed in excess of ten	.25 each up to \$10.00	
Social Worker	5.00	30-30-10
Veterinarians	5.00	30-10-10
All other Businesses not listed above (Ord. 97-1. Passed 5-15-97.)	15.00	

ARTICLE 721
Business and Occupation Tax

<p>721.01 Definitions.</p> <p>721.02 Imposition of privilege tax.</p> <p>721.03 Business of selling tangible property; sales exempt.</p> <p>721.04 Manufacturing, compounding or preparing products; processing of food excepted.</p> <p>721.05 Production of coal and other natural resource products.</p> <p>721.06 Public service or utility business.</p> <p>721.07 Business of contracting.</p> <p>721.08 Small loan and industrial loan business.</p> <p>721.09 Business of operating amusements.</p> <p>721.10 Service business or calling not otherwise specifically taxed.</p>	<p>721.11 Business of furnishing property for hire.</p> <p>721.12 Tangible personal property.</p> <p>721.13 Banking and other financial business.</p> <p>721.14 Exemptions.</p> <p>721.15 Computation of tax; payment.</p> <p>721.16 Exclusions.</p> <p>721.17 Return and remittance by taxpayer.</p> <p>721.18 Erroneous computation.</p> <p>721.19 Payment; penalty for nonpayment.</p> <p>721.20 Tax cumulative.</p> <p>721.21 Collection by action or suit.</p> <p>721.22 Penalties.</p> <p>721.23 Administration and enforcement.</p>
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CROSS REFERENCES

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

Business and occupation tax - see W. Va. Code Art. 11-13

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

721.01 DEFINITIONS.

(a) When used in this article, the term “person” or the term “company”, herein used interchangeably includes any individual, firm, co-partnership, joint adventure, association, corporation, trust or any other group or combination acting as a unit and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context.

(b) “Tax year” or “taxable year” means either the calendar year, or the taxpayer’s fiscal year when permission is obtained from the Town Treasurer to use same as the tax period in lieu of the calendar year.

(c) “Sale” or “sales” or “selling” includes any transfer of the ownership of, or title to, property, whether for money or in exchange for other property.

(d) “Taxpayer” means any person liable for any tax hereunder.

(e) “Gross income” means the gross receipts of the taxpayer, other than a banking or financial business, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property (real or personal) or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs of expenses, or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts in the regular course and conduct of his business and extension of credit in connection with the sale of any tangible personal property or service, without any deductions on account of the cost of the property sold, the cost of material used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expense whatsoever. “Gross income” of a banking or financial business is specified in Section 721.11.

(f) “Gross proceeds of sale” means the value, whether in money, or other property, actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind.

(g) “Gross income” and “gross proceeds of sale” shall not be construed to include:

- (1) Cash discounts allowed and taken on sales;
- (2) The proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit;
- (3) The amount allowed as “trade-in value” for any article accepted as part payment for any article sold;
- (4) Excise taxes imposed by this State; or
- (5) Money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for the repayment of a debt of another.

(h) “Business” includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. “Business” shall not include a casual sale by a person who is not engaged in the business of selling the type of property involved in such casual sale. “Business” includes the production of natural resources or manufactured products which are used or consumed by the producer or manufacturer.

(i) “Service business or calling” includes all activities engaged in by a person for other persons for a consideration, which involves the rendering of a service as distinguished from the sale of tangible property, but shall not include the service rendered by an employee to his employer. This term shall include persons engaged in manufacturing, compounding or preparing for sale, profit or commercial use, articles, substances or commodities, which are owned by another or others, as well as persons engaged as independent contractors in producing natural resource products for persons required to pay the tax imposed by this article.

(j) “Selling at wholesale” or “wholesale sales” means and includes:

- (1) Sales of any tangible personal property for the purpose of resale in the form of tangible personal property;
- (2) Sales of machinery, supplies or materials which are to be directly consumed or used by the purchaser in the conducting of any business or activity which is subject to the tax imposed by this article;

- (3) Sales of any tangible personal property to the United States of America, its agencies and instrumentalities, or to the State of West Virginia, its institutions or political subdivisions.

(k) "Contracting" includes the furnishing of work or both materials and work in the fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property.

(l) "Banking business" or "financial organization" means any bank, banking association, trust company, industrial loan company, small loan company or licensee, building and loan association, savings and loan association, credit union finance company, investment company, investment broker or dealer, and any other similar business organization, at least ninety percent (90%) of the assets of which consists of intangible personal property and at least ninety percent (90%) of the gross receipts of which consists of dividends, interest and other charges derived from the use of money or credit. (Ord. 73-1. Passed 1-12-73.)

721.02 IMPOSITION OF PRIVILEGE TAX.

There is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities and in the amounts to be determined by the application of rates against values or gross income as set forth in the following sections. (Ord. 73-1. Passed 1-12-73.)

721.03 BUSINESS OF SELLING TANGIBLE PROPERTY; SALES EXEMPT.

Upon every person engaging or continuing within this Town in the business of selling any tangible property whatsoever, real or personal, including the sales of food, and the services incident to the sale of food in hotels, restaurants, cafeterias, confectioners and other public eating houses, except sales by any person engaging in or continuing in the business of horticulture, agriculture or grazing, or of selling stocks, bonds or other evidence of indebtedness, therein in likewise hereby levied and shall be collected, a tax equivalent to fifty-one hundredths (.50) of one percent (1%) of the gross income of the business, except that in the business of selling at wholesale the tax shall be equal to fifteen one hundredths (.15) of one percent (1%) of the gross income of the business. (Ord. 96-06. Passed 11-7-96.)

721.04 MANUFACTURING, COMPOUNDING OR PREPARING PRODUCTS; PROCESSING OF FOOD EXCEPTED.

Upon every person engaging or continuing within this Town in the business of manufacturing, compounding or preparing for sale, profit or commercial use, either directly or through the activity of others in whole or part, any article or articles, substance or substances, commodity or commodities, or electric power produced by public utilities or others and not taxed under other provisions of this article, or newspaper publishing (including all gross income or proceeds of sale from circulation and advertising), the amount of tax to be equal to the value of the article, substance, commodity or electric power or newspaper, manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same, except as otherwise provided, multiplied by a rate of thirty one hundredths (.30) of one percent (1%). The measure of this tax is the value of the entire product manufactured, compounded or prepared in this State for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the State. However, the dressing and processing of food by a person, firm or corporation shall not be considered as manufacturing or compounding but the sale of these products on a wholesale basis shall be subject to the same tax as is imposed on the business of selling at wholesale as provided in Section 721.03. (Ord. 96-06. Passed 11-7-96.)

721.05 PRODUCTION OF COAL AND OTHER NATURAL RESOURCE PRODUCTS.

Upon every person engaging or continuing within this Town in the business of producing for sale, profit or commercial use any natural resource products, the amount of such tax to be equal to the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided, multiplied by the respective rates as follows: Coal, one percent (1%); Limestone or sandstone, not mined or quarried, three percent (3%); Oil, blast furnace slag, three percent (3%); Natural gas, in excess of the value of five thousand dollars (\$5,000), six percent (6%); Limestone or sandstone, mined or quarried, one and one-half percent (1.5%); Timber, one and one-half percent (1.5%); Other natural resource products, two percent (2%). The measure of this tax is the value of the entire production in this Town, regardless of the place of sale or the fact that the delivery may be made to points outside the Town. (Ord. 96-06. Passed 11-7-96.)

721.06 PUBLIC SERVICE OR UTILITY BUSINESS.

Upon any person engaging or continuing within this Town in any public services or utility business, except railroad or railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, there is likewise hereby levied and shall be collected, taxes on account of the public service or utility business engaged in equal to the gross income of the business multiplied by the respective note as follows: Water companies, four percent (4%) except as to income received by Municipality owned water plant; Electric light and power companies, four percent (4%) on sales and demand charges for domestic purposes and commercial lighting, three percent (3%) on sales and demand charges for all other purposes, except as to income received by Municipality owned plants producing or purchasing electricity and distributing the same; Natural gas companies, three percent (3%) on gross income, gross income for the purpose of this section is to be determined by first deducting from the gross income all sales of gas to consumers within this Municipality the amount of tax paid by the taxpayer to the State of West Virginia of 1931, as amended, and in effect on July 1, 1972, on the production of gas; and all other public service utility companies, two percent (2%). The measure of this tax shall not include gross income derived from commerce between the State of West Virginia and other states of the United States or between this state and foreign countries. (Ord. 96-06. Passed 11-7-96.)

721.07 BUSINESS OF CONTRACTING.

Upon every person engaging or continuing within this Town in the business of contracting, the tax shall be equal to two percent (2%) of the gross income of the business. (Ord. 96-06. Passed 11-7-96.)

721.08 SMALL LOAN AND INDUSTRIAL LOAN BUSINESS.

Upon every person engaging or continuing within this Town in the business of making loans of money, credit goods or things in action, who because of such activity is required under the provisions of Article 7-A, Chapter 47, of the Code of West Virginia, 1931, as amended, to obtain a license from the Commissioner of Banking of the State of West Virginia, and upon each and every industrial loan company the tax shall be one percent (1%) of the gross income of any activity, notwithstanding any other provisions of this article. (Ord. 96-06. Passed 11-7-96.)

721.09 BUSINESS OF OPERATING AMUSEMENTS.

Upon every person engaging or continuing within this Municipality in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, race track, radio broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to fifty one hundredths (.50) of one percent (1%) of the gross income of the business.

(Ord. 73-1. Passed 1-12-73.)

721.10 SERVICE BUSINESS OR CALLING NOT OTHERWISE SPECIFICALLY TAXED.

Upon every person engaging or continuing within this Municipality in any service business or calling not otherwise specifically taxed under this article, there is likewise hereby levied and shall be collected a tax equal to one percent (1%) of the gross income of any such business.

(Ord. 73-1. Passed 1-12-73.)

721.11 BUSINESS OF FURNISHING PROPERTY FOR HIRE.

Upon every person engaging within this Municipality in the business of furnishing any real or tangible personal property, which has a tax situs in this Municipality or any interest therein for hire, loan, lease or otherwise, whether the return by in the form of rentals, royalties, fees, or otherwise, the tax return shall be one percent (1%) of the gross income of any such activity.

(Ord. 73-1. Passed 1-12-73.)

721.12 TANGIBLE PERSONAL PROPERTY.

The term "tangible personal property", as used herein, shall not include money or public securities. (Ord. 73-1. Passed 1-12-73.)

721.13 BANKING AND OTHER FINANCIAL BUSINESS.

Upon every person engaging or continuing within this Municipality in the business of banking or financial business, from and after February 1, 1973, the tax shall be equal to one percent (1%) of the gross income received from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, however denominated, royalties, charges for bookkeeping or data processing, receipts from check sales, charges or fees, and receipts from the sale of tangible personal property: Provided, however, that gross income shall not include:

- (a) Interest received on the obligations of the United States, its agencies and instrumentalities,
- (b) Interest received on the obligations of this or any other State, territory or possession of the United States, or any political subdivision of any of the foregoing or of the District of Columbia, or
- (c) Interest received on investments or loans primarily secured by nontransients; provided however, that all interest derived on activities exempt under (c) above, shall be reported, as to amounts, on the return of a person taxable under the provisions of this section.

Persons taxed pursuant to the provisions of this section shall not be taxed under Section 721.03 through 721.13, inclusive, of this article.

The Town Council hereby finds and declares that it is the intent of Council to subject national banking associations and other financial organizations to the tax imposed by this section, in accordance with the authorization contained in Section 5219 of the Revised Statutes of the United States as amended by Public Law 91-156 enacted December 24, 1969.

(Ord. 73-1. Passed 1-12-73.)

721.14 EXEMPTIONS.

There shall be an exemption in every case of fifty dollars (\$50.00) in amount of tax computed under the provisions of this article. A person exercising a privilege taxable hereunder for a fractional part of a tax year shall be entitled to an exemption of the sum bearing the proportion of fifty dollars (\$50.00) that the period of time the privilege is exercised bears to a whole year. Only one exemption shall be allowed to any one person, whether he exercises one or more privileges hereunder. (Ord. 73-1. Passed 1-12-73.)

721.15 COMPUTATION OF TAX; PAYMENT.

The tax imposed by this article shall be paid in quarterly installments on or before the expiration of one month after the end of the quarter in which it accrues. The taxpayer shall, within one month after the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, sign the same, and mail the same, together with a remittance of the amount of tax so estimated to the Town Treasurer. In estimating the amount of tax due for each quarter, the taxpayer may deduct one-fourth of the total exemption allowed for the year. When the total tax for which any person is liable under this article does not exceed the sum of one hundred dollars (\$100.00), in any year, the taxpayer may pay the same quarterly as aforesaid, or with the consent in writing of the Town Treasurer at the end of the month next following the close of the tax year. The Town Treasurer shall prescribe and furnish the form or forms for the estimates required hereunder. (Ord. 73-1. Passed 1-12-73.)

721.16 EXCLUSIONS.

The provisions of this article shall not apply to:

- (a) Insurance companies which pay the State of West Virginia a tax upon premiums, provided, however, that said exemption shall not extend to that part of the gross income of insurance companies which is received for the use of real property, other than property in which such income be in the form of rent or royalties;
- (b) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members;
- (c) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit;
- (d) Corporations, associations and organizations organized and operated exclusively for religious or charitable purposes;
- (e) Production credit association, organized under the provisions of the Federal "Farm Credit Act of 1933". Provided, however, that the exemptions of this section shall not apply to corporation or co-operative associations organized under the provisions of Article 4, Chapter 19, of the Code of West Virginia, 1931, as amended.
(Ord. 73-1. Passed 1-12-73.)

721.17 RETURN AND REMITTANCE BY TAXPAYER.

On or before the expiration of one month after the end of the tax year, each taxpayer shall make a return, in the form prescribed by the Town Treasurer, for the entire tax year, showing his proceeds of sales or gross income of business, trade or calling and compute the amount of tax chargeable against him in accordance with the provisions of this article and deduct the amount of quarterly payments and transmit with his return a remittance covering the residue of the tax chargeable against him to the Town Treasurer. Such return shall be signed by the taxpayer, if made by an individual, or by the president, vice president, secretary or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a firm, partnership, joint adventure, association, trust or any other group or combination acting as a unit, shall sign the return on behalf of the taxpayer. (Ord. 73-1. Passed 1-12-73.)

721.18 ERRONEOUS COMPUTATION.

(a) If the taxpayer shall make any clerical error which shall be apparent on the face of the return in computing the tax assessable against him, the Town Treasurer shall correct such error or reassess the proper amount of tax, and notify the taxpayer of his action by mailing to him promptly a copy of the corrected assessment, and any additional tax for which such taxpayer may be liable shall be paid within fifteen days after the receipt of such statement.

(b) If the amount already paid by the taxpayer excess that which should have been paid on the basis of the tax so recomputed the excess so paid shall be immediately refunded to the taxpayer by the Town Treasurer out of any funds available for the purpose, or the taxpayer may elect to apply overpayment as a credit upon the tax subsequently accruing hereunder. (Ord. 73-1. Passed 1-12-73.)

721.19 PAYMENT; PENALTY FOR NONPAYMENT.

(a) Every remittance of the tax imposed by this article shall be made by bank draft, certified check, money order or certificate of deposit, to the Town Treasurer, who shall issue his receipt therefor to the taxpayer and pay the money into the Municipal Treasury to be kept and accounted for as provided by law.

(b) If any taxpayer fails to make the return required by this article, or makes his return but fails to remit in whole or in part the proper amount of tax, there shall be added to the amount of the tax unpaid, from the date such tax should have been paid, a penalty in the amount of five percent (5%) of the tax for the first month or fraction thereof, of delinquency, and one percent (1%) of the tax for each succeeding month, or fraction thereof, of delinquency; provided, however, that if such failure is due to reasonable cause, the Town Council may waive or remit in whole or in part the penalties prescribed by this section.

(c) The penalties so added shall be collected at the same time and in the same manner as a part of the tax. (Ord. 73-1. Passed 1-12-73.)

721.20 TAX CUMULATIVE.

(a) The tax imposed by this article shall be in addition to all other licenses and taxes levied by ordinances of this Municipality.

(b) A tax due and unpaid under this article shall be a debt due the Municipality of Eleanor. It shall be a personal obligation of the taxpayer and shall be a lien upon all property of the taxpayer used in the business upon which the tax hereunder is imposed, and said lien shall have priority over all other liens and obligations except those in favor of or due the State of West Virginia, or the United States of America; provided, however, that no such lien of the Municipality shall be enforceable against a purchaser (including a lien creditor) of any such property for valuable consideration, without notice, unless the lien of the Municipality shall have been docketed in the Office of the Clerk of the County Court wherein such property is, before a deed therefor to such property is delivered for record to the Clerk of the County Court of such County; and provided, further, that the term "purchaser" as used herein shall be construed to include lien creditors whose liens were acquired and perfected prior to such docketing.

(c) It shall be the duty of the Town Treasurer to file a written notice of the lien provided for in Section 721.02 in the Office of the Clerk of the County Court in which any property of the taxpayer affected thereby is located, certifying in said notice what amount of money is owing by the taxpayer to the Municipality of Eleanor on account of such lien. Upon satisfaction of such lien, a properly acknowledged release thereof for recordation shall be delivered to the taxpayer by the Municipality of Eleanor.
(Ord. 73-1. Passed 1-12-73.)

721.21 COLLECTION BY ACTION OR SUIT.

The Municipality of Eleanor may collect any tax, interest, and penalty due and unpaid under the provisions of this article, by a civil action, or any other appropriate suit or proceeding in any court of competent jurisdiction. (Ord. 73-1. Passed 1-12-73.)

721.22 PENALTIES.

It shall be unlawful for any person to refuse to make the return provided to be made in Section 721.17; or to make any false or fraudulent return or false statement in any return with intent to defraud the Municipality of Eleanor, or to evade the payment of the tax, or any part thereof, imposed by this article; or for the president, vice president, secretary or treasurer of any corporation to make or permit to be made for any corporation to make or permit any false return, or any false statement in any return required by this article, with the intent to evade the payment of the tax hereunder. Any person violating any of the provisions of this article, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one hundred dollars (\$100.00) or imprisonment not exceeding thirty days in jail, or punished by both fine and imprisonment, at the discretion of the police court judge, within the limitations aforesaid.
(Ord. 73-1. Passed 1-12-73.)

721.23 ADMINISTRATION AND ENFORCEMENT.

The administration of this article is vested in, and shall be exercised by the Town Treasurer who shall prescribe the forms and reasonable rules in conformity with this article for the making of returns and for the ascertainment, assessment and collection of the tax imposed hereunder. The Town Attorney shall render any necessary assistance in the enforcement of this article.
(Ord. 73-1. Passed 1-12-73.)

ARTICLE 725
Intoxicating Liquor Tax

725.01 Tax levied.

CROSS REFERENCES

Authority to levy - see W. Va. Code 8-13-7; 60-7-7

Liquor control - see GEN. OFF. Art. 521

725.01 TAX LEVIED.

There is hereby imposed a tax of five percent (5%) of the retail purchase price of any and all intoxicating liquors purchased from the Alcohol Beverage Control Commission or from any person licensed to sell wine at retail to the public under the provision of Chapter 60, Article 8 of the aforesaid Code of West Virginia, within the corporate boundaries of the Municipality. Such tax shall be levied upon the purchaser of said intoxicating liquor or wine, and shall be added to any collected with the retail purchase price of such intoxicating liquor or wine. Such tax shall be received by the Municipality from the State Treasury pursuant to the rules and regulations adopted by the said Alcohol Beverage Control Commissioner. Provided, however, that such tax shall not be collected on intoxicating liquors, other than wine sold by or purchased from holders of a license issued under the provisions of Chapter 60, Article 7 of said West Virginia Code. Provided further, such tax shall be collected upon all sales of wine to holders of a license issued under the provisions of Chapter 60, Article 7 of said West Virginia Code from a wine distributor licensed pursuant to the provisions of Chapter 60, Article 3 et seq. of said West Virginia Code. (Ord. 83-1. Passed 7-21-83.)

ARTICLE 729
Public Utility Tax

729.01	Definitions.	729.06	Nonliability of utility; duty of Municipality; refunds; rules and regulations.
729.02	Imposition of tax; amount of tax.	729.07	Enforcement provisions; penalties.
729.03	Collection; time of payment; accounting; effective date; proration.	729.08	Notice to utilities.
729.04	Records; inspection thereof.		
729.05	Exemptions.		

CROSS REFERENCES

Authority to levy - see W. Va. Code 8-13-5(a)

Business and occupation tax on utilities - see BUS. & TAX. 721.06

729.01 DEFINITIONS.

The following words and phrases when used in this article shall for the purposes of this article have the following respective meanings:

- (a) "Person" includes individuals, firms, partnerships, associations, corporations and combinations thereof, of whatever form or character.
 - (b) "Public utility service" means all services and tangible personal property purchased within this Municipality from a seller, as hereinafter in this section defined, namely, telephone service, electric service, gas service, including bottled or liquid gas, if the seller thereof is classified as a public utility subject to the jurisdiction of the Public Service Commission of West Virginia; water service and sanitary sewer service; if purchased, used or consumed within the corporate limits of this Municipality.
 - (c) "Purchaser" includes every person who purchases, uses or consumes a public utility service;
 - (d) "Seller" includes every person, whether a public service corporation, a municipality or private corporation, classified as a public utility and subject to the jurisdiction of the Public Service Commission of West Virginia, who sells, furnishes or supplies a public utility service; and
 - (e) "User" means the owner or tenant of private residential property or the owner or tenant of property used for commercial or industrial purposes, and every combination thereof, of every kind or description.
- (Ord. 72-1. Passed 7-1-72.)

729.02 IMPOSITION OF TAX; AMOUNT OF TAX.

There is hereby imposed and levied upon each and every purchaser of a public utility service an excise tax upon the privilege of purchasing, using or consuming, within the corporate limits of this Municipality, such public utility service. Such tax shall be in the amount of two percent (2%) of the charge (exclusive of any Federal or State tax thereon imposed upon the purchaser) made by the seller against the purchaser with respect to each public utility service, which tax in every case shall be collected by the seller and paid by the purchaser upon the amount of each periodic statement rendered such purchaser by the seller, and shall be paid by the purchaser to the seller at the time the purchase price or such charge shall become due and payable under the agreement between the purchaser and the seller. The tax imposed and levied by this article is in addition to all other taxes imposed and levied by this Municipality. In the event the amount of the charge for any single public utility service exceeds the sum of twenty thousand dollars (\$20,000) in any given calendar year, to any single purchaser, no tax shall be imposed for such additional purchase, use or consumption in excess of said amount of twenty thousand dollars (\$20,000). In the event more than one public utility shall furnish the identical public utility service to the same purchaser, said purchaser shall be entitled to group the same as a single public utility service in calculating the amount of the charges in any calendar month for such public utility service. (Ord. 72-1. Passed 7-1-72.)

729.03 COLLECTION; TIME OF PAYMENT; ACCOUNTING; EFFECTIVE DATE; PRORATION.

It shall be the duty of every seller in acting as the tax collecting medium or agency for this Municipality to collect from each purchaser for the use of this Municipality the tax hereby imposed and levied at the time of collecting the purchase price charged for its public utility service, and the amount of tax actually collected during each calendar month shall be reported by each seller to this Municipality and each seller shall remit the amount of tax shown by said report to have been collected to this Municipality on or before the last day of the second calendar month following the month in which collected, together with the name and address of any purchaser who has failed or refused to pay the tax so imposed and levied. The tax imposed and levied by this article shall apply to periodic statements rendered after July 1, 1971, for public utility service rendered subsequent to July 1, 1971, and when any such periodic statement covers public utility service rendered both before and after said date, only that portion of the charge for public utility service rendered after said date shall be subject to such tax, and the portion subject to such tax shall be such portion of the total charge as the number of days after June 30, 1971, within the period covered by such periodic statement, bear to the total number of days covered by such periodic statement. The required reports shall be in the form prescribed by the official of this Municipality charged with the responsibility of collecting taxes due this Municipality. (Ord. 72-1. Passed 7-1-72.)

729.04 RECORDS; INSPECTION THEREOF.

Each and every seller shall keep and maintain complete records showing all purchases of public utility service within the corporate limits of this Municipality, which records shall show the charge made against each purchaser, the dates such public utility service was furnished, the date of payment therefor, and the amount of tax imposed hereunder, and such records shall be kept open for inspection by the duly authorized agents of this Municipality at reasonable times, and the duly authorized agents of this Municipality shall have the right, power and authority to make at the expense of this Municipality such transcripts thereof during such times as they may desire. (Ord. 72-1. Passed 7-1-72.)

729.05 EXEMPTIONS.

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

- (a) Purchases of public utility service for resale;
- (b) Purchases of public utility service by the United States of America, the State of West Virginia, and the political subdivisions, municipalities, boards, commissions, authorities and public corporations thereof;
- (c) Purchases of tangible personal property such as appliances or the like, as distinguished from the public service supplied;
- (d) Charges for telephone services which are paid by the insertion of coins into coin-operated telephones, and specific charges or tolls for telephone calls to points outside the corporate limits of this Municipality; and
- (e) Nonrecurring or one-time charges incidental to the furnishing of public utility service. (Ord. 72-1. Passed 7-1-72.)

729.06 NONLIABILITY OF UTILITY; DUTY OF MUNICIPALITY; REFUNDS; RULES AND REGULATIONS.

There shall be no liability upon the seller for erroneously collecting the tax hereby imposed and levied or for erroneously failing to bill for such tax as a result of a good faith mistake on the part of the seller. When any purchaser contends that such tax is not owed by such purchaser on the ground that the public utility service was not purchased, used or consumed within the corporate limits of this Municipality, the seller shall refer the question to the official of this Municipality charged with the responsibility of collecting taxes due to this Municipality, and such seller shall thereafter collect or refrain from collecting such tax from such purchaser for such public utility service as instructed in writing to do by such officials of this Municipality. Any and all claims for refunds of any such tax shall be presented to this Municipality and not to the seller.

The official of this Municipality charged with the responsibility of collecting taxes due this Municipality, shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this article.
(Ord. 72-1. Passed 7-1-72.)

729.07 ENFORCEMENT PROVISIONS; PENALTIES.

(a) Any amount of tax due and unpaid under this article shall be a debt due this Municipality. It shall be a personal obligation of the purchaser which shall be enforceable as provided in Section 15, Article 13, Chapter 8 of the Code of West Virginia, 1931, as amended, or in any other manner now or hereafter provided by law for compelling the payment of taxes due municipalities.

(b) Any purchaser failing or refusing to pay the tax hereby imposed and levied and any seller or purchaser violating any of the provisions hereof or any lawful rule and regulation promulgated hereunder shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one hundred dollars (\$100.00). The failure or refusal to pay the tax for public utility service purchased, used or consumed during different periodic statement periods shall constitute a separate and distinct offense.

(Ord. 72-1. Passed 7-1-72.)

729.08 NOTICE TO UTILITIES.

The tax hereby imposed and levied shall not be effective until this Municipality gives sixty days' written notice by certified mail of the effective date of this article to any public utility doing business within this Municipality which is required to collect the tax imposed and levied hereby. (Ord. 72-1. Passed 7-1-72.)

ARTICLE 733
Wine Dealers

733.01 Imposition of tax.

733.02 Fee.

CROSS REFERENCES

Authority to levy - see W. Va. Code 8-13-4

Liquor control - see GEN. OFF. Art. 521

733.01 IMPOSITION OF TAX.

There is hereby imposed an annual license tax upon distributors and retailers of wine within the incorporated limits of Eleanor, and to such end, after the effective date of this article, no person may engage in business in the capacity of distributor or retailer of wine as provided by Chapter 60, Article 8 of the West Virginia Code of 1931, as last amended, within the corporate limits of the Town, without first obtaining a license from the Town, nor shall a person continue to engage in any such activity after his license has expired, been suspended or revoked. No person may be licensed in more than one of such capacities at the same time.
(Ord. 81-4. Passed 8-6-81.)

733.02 FEE.

- (a) The Town shall collect an annual fee for license issued under this article as follows:
- (1) Twenty-five hundred dollars (\$2,500) for a distributor's license.
 - (2) One hundred fifty dollars (\$150.00) per year for a retailer's license.
- (b) The license period shall begin on the first day of July of each year commencing with July 1, 1981 and ending on the thirtieth day of June of the following year, and if the initial license is granted for less than a year, the fee shall be computed in proportion to the number of quarters remaining in the fiscal year, including the quarter in which application is made.
- (c) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.
(Ord. 81-4. Passed 8-6-81.)

ARTICLE 737
Reciprocal Exchange of Tax Information

737.01 Purpose.	737.05 Persons entitled to secure information.
737.02 Exchange of information.	737.06 Withholding of tax information.
737.03 Information subject to exchange.	737.07 Security and protection of return information.
737.04 Disclosure to other governmental units.	

737.01 PURPOSE.

The purpose of this article is to aid in the administration of State and Municipal taxes by providing for the exchange of tax information between the State of West Virginia and the Town of Eleanor, a political subdivision thereof.
(Agreement dated 11-19-92.)

737.02 EXCHANGE OF INFORMATION.

The State and Town hereby agree that they shall, in accordance with the terms and conditions contained herein, exchange, disclose to and permit the other party to inspect tax information in its possession, but only to the extent necessary in the administration and enforcement of the requesting party's tax laws and for the assessment and collection of its taxes.
(Agreement dated 11-19-92.)

737.03 INFORMATION SUBJECT TO EXCHANGE.

(a) Tax information subject to this article shall include reports, declarations and returns, or copies thereof, filed with the Tax Commissioner or the appropriate municipal authorities, provided:

- (1) That this information is limited to business and occupation tax, sales tax from single location businesses and liquor sales tax; and
- (2) That this information shall be furnished only to the extent necessary for the administration of the requesting party's tax laws; and
- (3) That this information shall be disclosed only to individuals authorized under this article, who will be only State officers or employees subject to the penalties for unlawful disclosure set forth in W. Va. Code 11-10-5d(c).

(b) Under no circumstances shall the tax information exchange include any information or data secured from the Federal government, from another state or the District of Columbia, or from any other municipality or local government unit.
(Agreement dated 11-19-92.)

737.04 DISCLOSURE TO OTHER GOVERNMENTAL UNITS.

Neither party to this article shall disclose any tax information obtained by virtue of this article to the Federal government, to another state, to other agencies or departments of the receiving party, or to any other local government unit or municipality without the consent of the party from which the information is obtained.

(Agreement dated 11-19-92.)

737.05 PERSONS ENTITLED TO SECURE INFORMATION.

(a) The parties to this article shall furnish, in writing, the names, addresses and other needed information of the personnel authorized to request, inspect and receive tax information under the terms of this article. Only persons who are State or Municipal officers or employees subject to the penalties for unlawful disclosure set forth in W. Va. Code 11-10-5d(c) and Section 737.07 of this article shall be included.

(b) The Tax Commissioner or the appropriate municipal authority shall promptly give written notice to the other party of any change in employment, duties or other relevant matters which affect a designated person's right to request, inspect and receive information under this article. (Agreement dated 11-19-92.)

737.06 WITHHOLDING OF TAX INFORMATION.

Either party to this article may withhold or refuse to exchange tax information:

- (a) If disclosure of such information would be detrimental to its ability to enforce or to administer its tax laws, or to the assessment and collection of taxes; or
- (b) If disclosure of such tax information would interfere with any pending audit or litigation; or
- (c) If the security measures practiced by the requesting party are insufficient to ensure the confidentiality of the tax information requested; or
- (d) If the tax information requested relates to a person or business entity which has not complied with the business registration requirements set forth in W. Va. Code 11-21-1 et seq.

(Agreement dated 11-19-92.)

737.07 SECURITY AND PROTECTION OF RETURN INFORMATION.

(a) It shall be the obligation of the party who requested and received tax information under this article to protect the confidentiality and secrecy of that information.

(b) To protect against unauthorized disclosures of tax information received under this article, it shall be the duty of the Town of Eleanor to have in effect an ordinance making any officer or employee of the City who makes such disclosure guilty of a misdemeanor and, upon conviction, fining him not more than one thousand dollars (\$1,000), or imprisoning him for not more than one year, or both, together with the costs of prosecution. No disclosures shall be made under this article unless such an ordinance is in effect.

(c) For the purposes of this article, "unauthorized disclosure" means the release to any persons of any tax information obtained by virtue of this article, unless the person receiving the information is the authorized counsel of the State or City and shall be using the information only for the purpose of administering business and occupation taxes, sales tax, or liquor sales tax, or the person who filed the return has authorized, in writing, its release, thereby waiving his right to secrecy. (Agreement dated 11-19-92.)