

The regular meeting of the Beverly Town Council was held Monday, August 10, 2020, at 6:30 pm in council chambers of Beverly Town Hall. Members and visitors stood for the Pledge of Allegiance and were led in prayer by Mayor Andy Burns. Mayor Burns called the meeting to order in the presence of recorder Barbara Smith, members Debbie Stalnaker, Robbie Moyer, Matt Lewis and Becky Weese. Katie Whittaker was absent. Visitors included Kenny Weese, Jarrod Phillips, Mark Scott and Jay Gillespie.

With all members having received copies of the minutes, Mr. Moyers made a motion to forego the oral reading of the July 13, 2020 minutes and to accept the minutes as submitted. Motion seconded by Mrs. Stalnaker.

#### BUSINESS LICENSES

A motion was made by Mrs. Weese to accept the five business licenses applied for year 2020-2021. Second by Mr. Lewis. All in favor. Clerk Wilson stated all licenses have been brought up to date with the exception of the Day Care on Files Creek.

#### KUBOTA REPAIRS/NEW PURCHASE

The Kubota has been repaired and in use. The gravelly was being used in its place, but now the motor has went out of it. The town will need to get another mower. The Utility boards recommend that one be purchased for use by water, sewer and the town to save money for everyone. The Mayor checked at Jimmy Harman's on the four lane. He has two brands, the Simplicity and the Ferris. The Ferris is a better grade mover, and comparing prices with other local dealers and with a discount that he gave the town, the Mayor and Utility Boards felt it would be the best deal. The price of the 44" cut heavy duty Ferris is \$5250, and this is in stock. The other Ferris is \$4500, but there are none in stock. Council, discussing the covid 19 situation, felt it would be better to take the one in stock since it is needed now. A motion was made by Mrs. Stalnaker to buy the Ferris 44" cut heavy duty from Jimmy Harman at a cost of \$5250, cost to be divided by the entities. Motion seconded by Mrs. Weese with all in favor.

#### IPMC UPDATED ORDINANCE 1<sup>ST</sup> READING

An e-mail was received from Robert Chenoweth, town attorney, in regards to information provided by the State Fire marshal's office that was sent to him by Mr. Annon. Mr. Chenoweth used the corrected language from the fire marshal regarding IPMC code and added it to our IPMC ordinance. The present IPMC becomes null and void until we adopt the new information. A motion was made by Mr. Moyer to adopt, enact and re-enact the 2015 Edition of the International Property Maintenance Code (see attachment #1 dated August 10, 2020). Motion seconded by Mrs. Stalnaker, with all in favor. Mrs. Wilson said the ordinance will have to be published in the Intermountain, and the second reading will be held at a public meeting.

#### SEWER RATE INCREASE 1<sup>ST</sup> READING

Mayor Burns explained the reasons behind a sewer rate increase for the town. This increase will only be for residents having sewer service. Most out of town residents on the water system do not have sewer. The rate is .26% just on the sewer. The increase will correct our tariff, which is not correct at this time. In order to get grants, the grant people look at our rates to see if we are charging enough to qualify for help. Our sewer system is in need of a lot of repair.

We are in the middle of our sewer upgrade and the grant people look at our numbers. If we are below what we should be charging, we can't get grants. Most of the monthly violations that we are getting are from infiltration which we are working on now. First phrase of the operations now is to fix the lines and the pump stations. We are going to have to do this to get the free funding or we are going to have to pay the \$12 million price to fix our system. We can get around \$10 million of it paid for. This project has been going on for three years.

A motion was made by Mrs. Stalnaker to adopt the ordinance of the common council of the Town of Beverly, WV, increasing Rates related to providing municipal sewer services to all (see attachment #2 Dated August 10, 2020.). Motion seconded by Mr. Moyer, with all in favor.

#### IPMC LIEN

A motion was made by Mrs. Weese to file the notice of lien on Brad Reed for violation of the IPMC code. The mayor will return to our attorney a signed Notice of Lien on Mr. Reed. Motion seconded by Mr. Lewis, with all in favor.

#### MARSTILLER PROPERTY

Charlie Marstiller called the town regarding the lien on his property by the town where a house was torn down. The agreed lien in the amount of \$7500 was to tear the house down in November 2018. He wanted to know if the town be willing to remove the lien. The council discussed the issue and was in agreement that he has never paid any amount on the lien and feels that council can't remove the lien. The town's money paid for the removal and he agreed to the lien.

Mark Scott, County Commissioner, updates: Safe Buildings Enforcement has sent a letter to owners of the Shreve property. Mayor Burns said the DOH is taking steps to have their property cleaned up. The owner who wants to put a new business in the Reckart building is still planning on bringing the business to Beverly. The Commission is planning on purchasing the property where the Elks Pool is and installing a swimming pool and splash pad. The house in the south end of Beverly is still to be moved, they can't get the money to move the house, but have everything else that is needed.

Jay Gillespie told council it was the same old story. After putting 28 ton of dirt on his property, the ground and house is sinking away, the water lays there all the time. Jay explained he was sick of trying to keep the water out. He said no engineers have come to see him although he had been promised they would. The Mayor told him he has plans to take care of the water but they won't be happening next week, which takes time and money to get them in place but he promised he would come look at it.

INVOICES

A motion was made by Mrs. Weese to pay the August invoices in the amount of \$5,886.83. Motion seconded by Mr. Lewis with all in favor.

UPDATES:

Have not heard back regarding the Frontier Claim

Have not heard anything on the Human Rights Commission Discrimination Complaint

Waiting to hear on the PSC Annual Reports

Motion made to adjourn by Mr. Lewis, second by Mrs. Weese. Meeting adjourned at 7:47 pm.

  
MAYOR: ANDY BURNS  
RECORDER: BARBARA SMITH



## ORDINANCE \_\_\_\_\_

**AN ORDINANCE ADOPTING, ENACTING, AND RE-ENACTING THE 2015 EDITION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE, AS AUTHORIZED BY THE WEST VIRGINIA STATE FIRE COMMISSION, REGULATING AND GOVERNING THE CONDITIONS AND MAINTENANCE OF ALL PREMISES, BUILDINGS AND STRUCTURES; BY PROVIDING THE STANDARDS FOR SUPPLIED UTILITIES AND FACILITIES AND OTHER PHYSICAL THINGS AND CONDITIONS ESSENTIAL TO ENSURE THAT STRUCTURES AND PREMISES ARE SAFE, SANITARY, AND FIT FOR HUMAN OCCUPATION AND USE; AND THE CONDEMNATION OF STRUCTURES AND PREMISES UNFIT FOR HUMAN OCCUPANCY AND USE; AND THE DEMOLITION OF SUCH EXISTING STRUCTURES IN THE TOWN OF BEVERLY; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES THEREOF, AND REPEALING ALL OTHER ORDINANCES OR PARTS OF LAWS IN CONFLICT HERewith**

**WHEREAS**, pursuant to the authority vested in the Town Council of the Town of Beverly, West Virginia, pursuant to West Virginia Code §§ 8-11-4 and 8-12-13, Council shall have plenary power to adopt an ordinance or code of ordinances to adopt such State building code as promulgated by the State Fire Commission; and

**WHEREAS**, pursuant to the authority vested in it by the West Virginia State Legislature, the State Fire Commission has promulgated Title 87, Series 4, Legislative Rule of the State Fire Commission, entitled "Building Code;" and,

**WHEREAS**, the Legislative Rule of the State Fire Commission, Title 87, Series 4 (87 CSR 4) of the West Virginia Code for State Regulations, permits adoption of the International Property Maintenance Code without requiring adoption of the other National Codes and Standards included under the West Virginia State Building Code; and,

**WHEREAS**, by Ordinance enacted November 13, 2017, the Town Council of the Town of Beverly adopted the 2015 edition of the International Property Maintenance Code; and,

**WHEREAS**, by Act of the West Virginia Legislature Title 87, Series 4 was amended to revise Section 87.4-4 paragraphs 4.1.j.1, 4.1.k, and 4.1.k.1 and,

**WHEREAS**, Section 87.4-8, Paragraph 8.1 provides "all building codes previously adopted by local jurisdictions are null and void."; and,

**WHEREAS**, the amendment of Title 87, Series 4 had the consequence of nullifying and voiding the Town of Beverly's adoption of the 2015 Edition of the International Property Maintenance Code effective August 1, 2020, thereby requiring the Town of Beverly to adopt, enact, and re-enact the 2015 Edition of the International Property Maintenance Code, unchanged, so as to continue to enforce those provisions of the State Building Code; and,

**WHEREAS**, the Town Council finds that in order to facilitate the public good and promote the general public health, safety and welfare, the Town Council of the Town of Beverly has deemed it necessary to properly regulate home matters related to the repair and maintenance of all buildings, structures and premises within the Town of Beverly; and,

**WHEREAS**, it is the intent of the Town Council of the Town of Beverly to establish minimum property maintenance standards by adopting and putting into force and effect the International Property Maintenance Code, 2015 Edition pursuant to W.Va. Code § 8-12-13;

**NOW, THEREFORE**, be it ordained and enacted by the Town Council of the Town of Beverly, West Virginia, that Section 11, Chapter 3, Article II, Subsection 3-7 be amended and the same is enacted and re-enacted as follows:

Sec. 3-7 Adopted.

(a) There is hereby adopted and incorporated by reference, for the purpose of safe guarding life and property and to insure the quality of construction of the applicable structures situate throughout the Municipality, that certain code known as the 2015 Edition of the International Property Maintenance Code, as amended or revised by the West Virginia State Fire Commission prior to or subsequent to adoption of this Ordinance, and all model codes and standards adopted thereunder are hereby adopted by reference as if fully set forth verbatim herein, which is part of the code known generally as the State Building Code as promulgated by the State Fire Commission pursuant to authority granted under West Virginia Code § 29-3-5b.

(b) The State Building Code, as adopted and incorporated by reference herein, and its application within this Municipality shall be subject to Legislative Rules adopted by the State Fire Commission and authorized by the West Virginia Legislature.

(c) The following sections of the State Building Code, as adopted and incorporated by reference herein are hereby revised as follows:

- (i) Section 101.1. Insert: "Town of Beverly"
- (ii) Section 103.5. Insert: "The fees for activities and services performed by Town of Beverly personnel or its agents in carrying out its responsibilities under this code shall be set forth in a fee schedule adopted by the Town of Beverly Commission by Resolution, which may be amended from time to time."
- (iii) Section 112.4. Insert: "a fine of no less than \$50 dollars or more than \$500 dollars."
- (iv) Section 302.4. Insert: "six (6) inches"
- (v) Section 304.14. Insert: "from April 1 to October 1"
- (vi) Section 602.3. Insert: "from November 1 to April 1"



(vii) Section 602.4. Insert: "from November 1 to April 1"

(d) Nothing in this legislation or in the International Property Maintenance Code hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed of this law. Nor shall any just or legal right or remedy of any character be lost, impaired, or affected by this legislation.

(e) Any existing ordinance that is determined to be more stringent or imposes a higher standard than is required by the International Property Maintenance Code shall govern, provided such ordinance is not contrary with the laws of the State of West Virginia and is not contrary to recognized standards and commonly accepted engineering practices.

(f) The Code Official shall enforce the provisions of the International Property Maintenance Code. The Code Official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. The Code Official shall issue all necessary notices and orders to ensure compliance. Such interpretations, policies, and procedures shall comply with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

The Code Official shall keep official records of all business and activities of the department specified in the provisions of this code. Such records shall be retained in the official records for the period required for retention of public records.

(g) The Town of Beverly Police Department shall assist the Code Official in the enforcement of the International Property Maintenance Code.

(h) The Violation; Penalties section of the International Property Maintenance Code is hereby amended and completed as follows:

Any person who shall violate a provision of the International Property Maintenance Code, or fail to comply therewith, or with any of the requirements thereof, shall be guilty of a misdemeanor and fined not less than twenty-five dollars (\$25.00), nor more than one hundred dollars (\$100.00). Each day that a violation continues after due notice has been served shall be deemed a separate offense. Failure to comply with a demolition order shall be deemed a violation subject to the penalties prescribed herein.

(i) If any section, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reasons whatsoever, such decisions shall not affect the remaining portions of this Ordinance, which shall continue in full force and effect, and to this end the provisions of this Ordinance are hereby declared to be severable.

(j) Jurisdiction over the enforcement of this Ordinance shall be with the Town of Beverly's Mayor pursuant to the power and duties of the Mayor as codified at W. Va. Code § 8-10-1.

(k) This Ordinance shall be deemed effective on passage.

**PASSED AND APPROVED ON FIRST READING THIS \_\_\_\_ DAY OF  
\_\_\_\_\_, 2020.**

**PASSED, APPROVED, AND EFFECTIVE ON SECOND AND FINAL READING  
THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020.**

**TOWN OF BEVERLY, WEST VIRGINIA**

\_\_\_\_\_  
**Mayor**

**Attest:**

\_\_\_\_\_  
**City Clerk**

## ORDINANCE \_\_\_\_

**AN ORDINANCE OF THE COMMON COUNCIL OF THE  
TOWN OF BEVERLY, WEST VIRGINIA, INCREASING RATES RELATED  
TO PROVIDING MUNICIPAL SEWER SERVICES TO ALL GENERAL DOMESTIC,  
COMMERCIAL, AND INDUSTRIAL SERVICE EXCEPT UNUSUAL INDUSTRIAL  
WASTE IN THE TOWN OF BEVERLY'S  
MUNICIPAL SEWAGE TREATMENT PLANT AND COLLECTION SYSTEM**

**WHEREAS**, the Town of Beverly, West Virginia, sometimes referred to as the Utility, has plenary power pursuant to W.Va. Code § 8-12-5(32) to lay and collect charges for sewer systems and sewer treatment and disposal systems rendered to those served within and those served without the corporate limits of the municipality;

**WHEREAS**, pursuant to W.Va. Code § 16-3-16, the Town of Beverly has the power and duty, by ordinance, to establish and maintain just and equitable rates, fees, or charges for the use of and service rendered by sewage works to be paid by the owner of each and every lot, parcel of real estate, or building that is connected with and uses such works by or through any part of the sewage system of the municipality or that in any way uses or is served by such works. Further, the governing body may change and readjust such rates, fees, or charges from time to time subject to the limitations provided in the West Virginia State Code;

**WHEREAS**, pursuant to W.Va. Code § 24-2-4(b) any ordinance passed by the Town of Beverly to increase the rates and charges shall be reviewed by the Public Service Commission pursuant to W.Va. Code § 24-2-4(b);

**WHEREAS**, the Town of Beverly has determined that an increase in the sewage rates is necessary, and will be in the best interest of the Town of Beverly's residence as a whole; and

**NOW THEREFORE, BE IT ORDAINED and ENACTED:** The following rules, rates, and charges are hereby fixed, determined and established for municipal sewerage services provided to all general domestic, commercial, and industrial service except unusual industrial waste in the Town of Beverly's Municipal Sewage Treatment Plant and Collection System, commencing upon the effective dates as herein provided, and in accordance with the following Rates and Schedules:

### **RULES AND REGULATIONS**

Rules and Regulations for the Government of Sewerage Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

### **SECTION 1 – TARIFF**

#### **APPLICABILITY**

Applicable within the entire territory served

Attachment #2 - August 10, 2020



#### AVAILABILITY

Available for general domestic, commercial, and industrial service except unusual industrial waste.

#### RATES

(customers with metered water supply)

Each 1,000 gallons of water per month \$8.99 per 1,000 gallons

#### FLAT RATE CHARGE (customers with non-metered water supply)

No bill will be rendered for less than \$35.39 per month.

#### MINIMUM CHARGE

No bill will be rendered for less than \$26.97 per month, which is the equivalent of 3,000 gallons of usage with a 5/8" or 3/4" meter.

#### DISCOUNT

The owner of the real property at Location No. 4252-00 shall receive a discounted rate of fourteen and one-half percent (14 and ½) for rates charged for metered water supply under this tariff.

#### DISCONNECT/RECONNECT/ADMINISTRATIVE FEES

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a wastewater bill in conjunction with a water service termination agreement with Midland Public Service District is reconnected, a reconnection fee of \$25.00 shall be charged.

#### RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the Town or a minimum of \$15.00 will be imposed upon any customer whose check for payment of charges is returned by their bank due as a result of nonpayment.

#### DELAYED PAYMENT PENALTY

On all accounts not paid in full within twenty (20) days of the bill, a minimum of ten percent (10%) will be added to the net amount shown on the bill. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

#### SERVICE CONNECTION (TAP) FEES PAYABLE IN ADVANCE

A tap fee of \$600.00 will be charged to the customer for each new wastewater connections.

#### RECONNECT FEE

When service has been disconnected for non-payment, violation of rules and regulations by the customer, or at the customer's request, a reconnect fee of \$25.00 will be charged.

### LEAK ADJUSTMENT RATE

\$2.50 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed and documented as an eligible leak on the customer's side of the meter. This rate shall be applied to all consumption for one billing cycle that is above the customer's historical 6 month average usage. (PSC Rules).

### SECURITY DEPOSIT

Not to exceed one-twelfth (1/12) of the annual estimated charge for residential service, or one-sixth (1/6) of the estimated charge for commercial service, or fifty dollars (\$50), whichever is greater.

### SURFACE OR GROUNDWATER SURCHARGE

An additional amount shall be charged where surface or ground water is introduced into the sanitary system where evidence of a violation exists.

Surcharge formula to be applied in cases where surface drainage is connected to the utility's wastewater system.

#### Applicability

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

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

S = The surcharge in dollars

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

R = The measured monthly rainfall, in inches.

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

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

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

Said surcharge shall be calculated and imposed for each month that said condition

continues to exist. Failure to pay the surcharge and or correct the situation shall give rise to the possible termination of water service in accordance with the Rules of the Public Service Commission of West Virginia.

### SURCHARGE FORMULA TO BE APPLIED TO A CUSTOMER PRODUCING UNUSUAL WASTE

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

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

- $C_i$  = charge to unusual users per year  
 $V_o$  = average unit cost of transport and treatment chargeable to volume, in dollars per gallon  
 $V_i$  = volume of waste water from unusual users, in gallons per year  
 $B_o$  = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD), in dollars per pound  
 $B_i$  = weight of BOD from unusual users, in pounds per year  
 $S_o$  = average unit costs of treatment (including sludge treatment) chargeable to total solids, in dollars per pound  
 $S_i$  = weight of total solids from unusual users, in pounds per year

When an unusual user is to be served, a preliminary study of its wastes, and the costs of transport and treatment thereof, will be made.

### SECTION 2- TARIFF EFFECTIVE DATE

The rates, charges and penalties provided herein shall become effective forty-five (45) days after enactment, or as soon thereafter as the same may be approved by the Public Service Commission of West Virginia.

### SECTION 3 - SEVERABILITY; REPEAL OF CONFLICTING ORDINANCES

The provisions of this Ordinance are severable, and if any clause, provision or section hereof shall be held void or unenforceable by the West Virginia Public Service Commission or any court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance. Upon the effective dates hereof, all ordinances, resolutions, orders or *parts* thereof in conflict with the provisions of this Ordinance are, to the extent of such conflicts, hereby repealed, and to the extent that the provisions of this Ordinance do not touch upon the provisions of prior ordinances, resolutions, orders or parts thereof, the same shall remain in full force and effect.



#### **SECTION 4- STATUTORY NOTICE AND PUBLIC HEARING**

Upon introduction hereof, the Town Clerk shall cause to be published a copy of this Ordinance once a week for two (2) successive weeks within a period of fourteen (14) consecutive days, with at least six (6) days between each publication, in the *Inter-Mountain*, a qualified newspaper of general circulation in the Town of Beverly, and said notice shall state that this Ordinance has been introduced, and that any person interested may appear before Council on September 14, 2020, at 6:30 p.m., which date is not less than ten (10) days after the date of the first publication of the Ordinance and notice, and present any comment or protest thereto, following which hearing, Council shall take such action as it shall deem proper. Copies of this Ordinance shall be available to the public for inspection at the office of the Town Clerk, Beverly, West Virginia.

First Reading: \_\_\_\_\_

Second Reading  
and Public Hearing: \_\_\_\_\_

TOWN OF BEVERLY, a municipal corporation

Mayor: \_\_\_\_\_

Clerk: \_\_\_\_\_