

The regular meeting of the Beverly Town Council was held Monday, April 10, 2023 at 6:30 pm in council chambers of Beverly Town Hall. Mayor Andy Burns called the meeting to order in the present of council members Rod Cooper, Matt Lewis, Katie Whittaker, Becky Weese, Robbie Moyer, Recorder Connie Pingley, Police Chief Allen Vanscoy, and Town Clerk Robin Wilson.

All present stood for the Pledge of Allegiance and the prayer was given by Mayor Burns.

MINUTES

Minutes were emailed to members for review prior to the meeting. Motion made by Becky Weese to approve minutes of March 13, 2023 & March 27, 2023 without reading aloud, seconded by Robbie Moyer. All in Favor.

Visitors/Public Hearing Zoning Ordinance

There were no visitors for the public hearing of the Zoning Ordinance.

Beverly Heritage Center - Chris Mielke

Chris Mielke is leaving as Director of the Beverly Heritage Center to take a position in South Carolina. His last day will be April 15. Michelle Pharis is the Deputy Director and will fill in until someone is hired. Beverly Heritage Days is scheduled for July 22, 2023 and the theme is The Circus is Coming to Town. There will be an American History Tour on June 19th, a Mother's Day Soiree Dinner will be on May 13th and the Landmark's Commission meeting is on April 11, 2023.

OLD BUSINESS

Second reading of Sewer Rate Increase Ordinance - Motion to approve made by Becky Weese, seconded by Robbie Moyer. All in favor. (Attachment #1)

BB Insurance Quotes - Matt Lewis made a motion to change to BB Insurance, Seconded by Becky Weese. All in favor.

American Rescue Plan Fiscal Recovery Plan - Katie Whittaker made a motion to allocate \$83,500 of the funds for the Water Tank repairs, seconded by Robbie Moyer. All in favor. Motion made by Becky Weese to allocate for sewer expenses of \$22,036, seconded by Robbie Moyer. All in favor. The remaining funds will be allocated for the purchase of the building next to the town hall for the police department.

NEW BUSINESS

First Reading of the Zoning Ordinance - Becky Weese made a motion to accept the first reading of the Zoning Ordinance, seconded by Robbie Moyer, All in favor. (Attachment #2)

A meeting is scheduled for April 18, 2023 at 6:30 pm to Lay the Levy.

CHIEF OF POLICE REPORT

Chief Vanscoy discussed they are still looking for a used vehicle. This was tabled until further notice.

FINANCIAL REVIEWS

Financial reports were reviewed and discussed.

VENDOR INVOICES

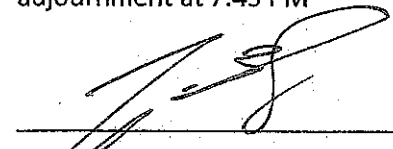
Vendor invoices were reviewed and a motion was made by Becky Weese to pay the invoices. Seconded by Robbie Moyer. All in favor.

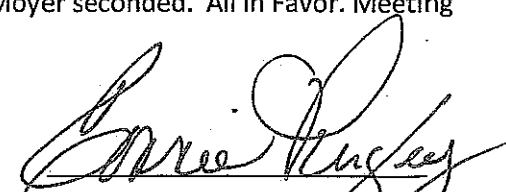
UPDATES AND INFORMATION APPROVED

Water & Sewer Board Meeting Minutes with Plant Operations Reports were not available at this time due to the board meetings being held after the council meeting. They will be available next month.

ADJOURNMENT

Matt Lewis made a motion to adjourn the meeting, Robbie Moyer seconded. All in Favor. Meeting adjournment at 7:45 PM



Andy Burns, Mayor

Connie Pingley, Recorder

ORDINANCE _____

**AN ORDINANCE OF THE COMMON COUNCIL OF THE
TOWN OF BEVERLY, WEST VIRGINIA, AMENDING ITS EXISTING ORDINANCE
RELATED TO RATES CHARGED IN 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 TO
AMEND THE EFFECTIVE DATE OF THE RATE INCREASE**

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;

WHEREAS, by Ordinance No. 25, the Town of Beverly enacted an *Ordinance of the Common Council of the Town of Beverly, West Virginia, Increasing Rates Related to Providing Municipal Sewer Service 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*, which was read for a second time, and enacted on October 31, 2022;

WHEREAS, Section 2 - Tariff Effective Date of Ordinance No. 25 reads that: "The rates, charges and penalties provided herein shall not be effective until forty-five (45) days following the passage of the ordinance, or upon substantial completion of the project, that is the subject matter of Case No. 22-0889-S-CN, currently pending before the West Virginia Public Service Commission, whichever is later, unless otherwise ordered.";

WHEREAS, the Town of Beverly has determined that the effective date of its previously enacted ordinance (Ordinance No. 25) is not in the best interest of the Town of Beverly, and that the effective date should be within forty-five (45) days of the enactment of the ordinance;

WHEREAS, the instant ordinance also amends Ordinance No. 25 in order to comply with the Public Service Commission Order entered on August 20, 2003, in Marshall County Public Service District No. 3, Case No. 03-0869-PWD-T-PW, and authorizes the Town to add a returned check charge equal to the fee charged by the Town's bank, not to exceed \$25.00, and to amend the length of time that the leak adjustment rate shall be applied to all consumption for one billing cycle that is above the customer's historical monthly usage from 6 months to 12 months;

WHEREAS, the Town of Beverly has now determined that the enactment of the instant ordinance is necessary as the result of a project to upgrade and improve its existing sanitary sewer system, and will be in the best interest of the Town of Beverly's residence as a whole, in that it will make the rate increases enacted on October 31, 2022 by Ordinance No. 25 effective sooner than the substantial completion of the project; 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 entire territory served

AVAILABILITY OF SERVICE

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	\$10.96 per 1,000 gallons
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FLAT RATE CHARGE (customers with non-metered water supply)

No bill will be rendered for less than \$43.19 per month.

DISCOUNT RATE CHARGE

The owner of 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.

MINIMUM CHARGE

No bill will be rendered for less than \$32.88 per month, which is the equivalent of 3,000 gallons of usage with a 5/8" or 3/4" meter.

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, not to exceed \$25.00, 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 twelve (12) 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.
- .000622 = 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 not be effective until 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 in the *Inter-Mountain*, a qualified newspaper of general circulation in the Town of Beverly, as a Class I legal advertisement and said notice shall state that this Ordinance has been introduced, and that any person interested may appear before Council at the meeting of the Council to be conducted on March 27, 2023, which date is not less than five (5) days after the date of publication of the notice of the proposed adoption of the proposed ordinance, 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.

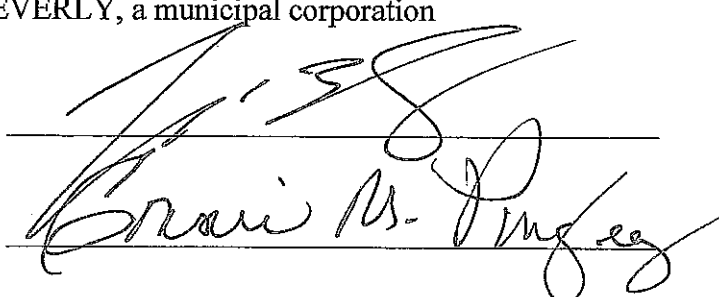
First Reading: March 13, 2023

Second Reading
and Public Hearing: April 10, 2023

TOWN OF BEVERLY, a municipal corporation

Mayor: _____

Recorder: _____

The image shows two handwritten signatures in cursive. The first signature is for the Mayor and the second is for the Recorder. Both signatures are written over horizontal lines. The Recorder's signature is more legible and appears to read "Brian B. Ingley".

ORDINANCE 21

AN ORDINANCE OF THE COUNCIL OF THE TOWN OF BEVERLY, WEST VIRGINIA, REPEALING THE CURRENT ORDINANCE 21-ZONING, AND OTHER CONFLICTING SECTIONS OF THE TOWN CODE AND ENACTING A NEW ZONING ORDINANCE TO BE DESIGNATED AS ORDINANCE 21: ZONING, BEVERLY TOWN CODE

WHEREAS, the Council of the Town of Beverly, West Virginia, first approved a zoning ordinance in October of 2007, with amendments in 2013; and

WHEREAS, since 2019, the Beverly Planning Commission has been working on updating the Town's zoning laws, to ensure that the updated zoning laws incorporate proven, effective practices and comply with all applicable state and federal laws; and

WHEREAS, during the entire process of the review and updating the zoning laws, the Beverly Planning Commission has relied on the pro bono advice and expertise of the planning and legal professionals from the WVU College of Law Land Use and Sustainable Development Law Clinic; and

WHEREAS, October 24 2022, the Beverly Planning Commission completed its work and presented to Council its Study and Report on Zoning which contained a proposed zoning ordinance; and

WHEREAS, the Town Council, pursuant to West Virginia Code §8A-7-1(3), has the authority to regulate land use within its jurisdiction by enacting a zoning ordinance; and

WHEREAS, the Town Council believes that it is in the best interests of the Town and its citizens to repeal the current zoning ordinance and certain related conflicting Town Code sections and to enact a new Zoning Ordinance, as set forth herein:

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Council of the Town of Beverly that the following sections of the Beverly Town Code be and are hereby **REPEALED** :

1. Ordinance 21: Zoning, Beverly Town Code.
2. Ordinance 20: Sign Ordinance
3. Ordinance 31: Ordinance to Regulate Gambling or Games of Chance
4. Ordinance 32: Yard Sale Ordinance

And be it further **ORDAINED** and **ENACTED** that Chapter 21, Zoning, Beverly Town Code be **REVISED** and **AMENDED** as follows:

THE TOWN OF BEVERLY ZONING CODE

CHAPTER 1

ARTICLE 101 PURPOSE AND INTRODUCTION

Section 101.01 Title.

This ordinance shall be known as the Zoning Ordinance of the Town of Beverly, West Virginia, hereinafter referred to as "this code" or "this ordinance."

Section 101.03 Authority.

Whereas, by act of the West Virginia State Legislature, as recorded in the West Virginia Code, the governing body of any county or municipality may, by ordinance, classify the territory under its jurisdiction into districts of such number, shape, and size as it may deem best suited to carry out the purpose of zoning.

Section 101.05 Purpose.

This code is consistent with the Town of Beverly Comprehensive Plan and was developed to promote the health, safety, morals, and general welfare of the public. Other purposes of this ordinance include:

- a. To plan so that adequate light, air, convenience of access, and safety from fire, flood, and other danger is secured;
- b. To ensure attractiveness and convenience is promoted;
- c. To lessen congestion;
- d. To preserve historic landmarks, sites, districts and buildings; and
- e. To promote the orderly development of land.

Section 101.07 Scope and Jurisdiction.

The provisions of this code shall apply to the construction, addition, alteration, moving, repair, and use of any building, structure, parcel of land, or sign within the Town of Beverly, except work located primarily on a public way or road, or on public utilities and public utility structures. In fulfilling these purposes, this code is intended to benefit the public as a whole and not any specific person or class of persons.

Although, through the implementation, administration, and enforcement of this code, benefits and detriments will be enjoyed or suffered by specific individuals, such is merely a byproduct of the overall benefit to the whole community. Therefore, unintentional breaches of the obligations of administration and enforcement imposed on the Town of Beverly hereby shall not be enforceable in tort.

Section 101.09 Interpretation, Conflict, and Severability.

In interpretation and application of this code, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provisions of law. Where the conditions imposed by, or pursuant to, these regulations are different from those imposed by any other provision of these regulations or any other ordinance rule or regulation, statute, or other provision of law, the provisions that are more restrictive and that impose the higher or greater standards shall control. If any portion of this code is held invalid for any reason, the remaining herein shall not be affected.

Section 101.11 Non-exclusionary Intent.

It is not the intent of this code to exclude any persons or groups with differing economic, race, color, religion, sex, national origin, disability or familial status from enjoyment of a residence, land ownership, or tenancy within the Town of Beverly; nor is it the intent of this code to use public powers in any way to

promote the separation within the Town of Beverly of economic, racial, religious, or ethnic groups, except as may be an incidental result of meeting the purposes outlined in this code.

Section 101.13 Official Zoning Map.

The Zoning Ordinance of the Town of Beverly shall include this code and the accompanying Official Zoning Map, which shall be considered part of this code. The Official Zoning Map shall be the map certified by the Town of Beverly. All subsequent amendments to the Official Zoning Map shall be certified by the Town of Beverly and then filed with both the office of the Clerk of Randolph County and the Clerk for the Town of Beverly.

Section 101.15 Enactment.

Therefore, the Council of the Town of Beverly hereby ordains for the purpose of accomplishing the objectives set out in the West Virginia Code, and Section 101.05 of this code, that the following be enacted as the Zoning Ordinance of the Town of Beverly, West Virginia.

Section 101.17 Effective Date.

This code shall take effect [EFFECTIVE DATE].