

TOWN OF WEST HAMLIN, WEST VIRGINIA

ORDINANCE NO. 16

AN ORDINANCE RELATING TO THE UNLAWFUL DISPOSAL OF LITTER; CIVIL AND CRIMINAL PENALTIES; LITTER CONTROL FUND; EVIDENCE; NOTICE VIOLATIONS; LITTER RECEPTACLE PLACEMENT; PENALTY; DUTY TO ENFORCE VIOLATIONS

WHEREAS, the Town Council of the Town of West Hamlin deems it advisable and necessary that it establish procedures to be utilized in addressing the unlawful disposal of litter and the enforcement of the laws relating thereto.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WEST HAMLIN as follows:

Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

- (a) (1) No person shall place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter in or upon any public or private highway, road, street or alley; any private property; any public property within the Town; or the waters of the state or within one hundred feet of the waters of this state, except in a proper litter or other solid waste receptacle.
- (2) It is unlawful for any person to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter from a motor vehicle or other conveyance or to perform any act which constitutes a violation of the motor vehicle laws contained in section fourteen, article fourteen, chapter seventeen-c of the *West Virginia Code*.
- (3) If any litter is placed, deposited, dumped, discharged, thrown or caused to be placed, deposited, dumped or thrown from a motor vehicle, or other mode of conveyance, it is *prima facie* evidence that the owner or the operator of the motor vehicle, or other mode of conveyance, intended to violate the provisions of this section.
- (4) "Litter" means all waste material including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof, or any other

offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

(5) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount not exceeding one hundred pounds in weight or twenty-seven cubic feet in size, is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than fifty dollars nor more than one thousand dollars, or in the discretion of the court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than eight nor more than sixteen hours, or both.

(6) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size is guilty of a misdemeanor. Upon conviction he or she is subject to a fine of not less than five hundred dollars nor more than two thousand dollars, or in the discretion of the court, may be sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than sixteen nor more than thirty-two hours, or both.

(7) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter in an amount greater than five hundred pounds in weight or two hundred sixteen cubic feet in size or any amount which had been collected for commercial purposes is guilty of a misdemeanor. Upon conviction, the person is subject to a fine not less than twenty-five hundred dollars or not more than twenty-five thousand dollars, or confinement in a county or regional jail for not more than one year or both. In addition, the violator may be guilty of creating or contributing to an open dump as defined in section two, article fifteen, chapter twenty-two of the *West Virginia Code* and subject to the enforcement provisions of section fifteen of said article.

(8) Any person convicted of a second or subsequent violation of this section is subject to double the authorized range of fines and community service for the subsection violated.

(9) The sentence of litter clean up shall be verified by authorized representatives of the Town. Any defendant receiving the sentence of litter clean up shall provide, within a time to be set by the court, written acknowledgment

from the Town's representative that the sentence has been completed and the litter has been disposed of lawfully.

(10) Any person who has been found by the court to have willfully failed to comply with the terms of a litter clean up sentence imposed by the court pursuant to this section is subject to, at the discretion of the court, double the amount of the original fines and community service penalties originally ordered by the court.

(11) All law-enforcement officers of the Town and authorized inspectors shall enforce compliance with this section.

(12) No portion of this section restricts an owner, renter or lessee in the lawful use of his or her own private property or rented or leased property or to prohibit the disposal of any industrial and other wastes into waters of this state in a manner consistent with the provisions of article eleven, chapter twenty-two of the *West Virginia Code*. But if any owner, renter or lessee, private or otherwise, knowingly permits any such materials or substances to be placed, deposited, dumped or thrown in such location that high water or normal drainage conditions will cause any such materials or substances to wash into any waters of the state, it is *prima facie* evidence that the owner, renter or lessee intended to violate the provisions of this section: *Provided*, That if a landowner, renter or lessee, private or otherwise, reports any placing, depositing, dumping or throwing of these substances or materials upon his or her property to the Mayor, Town Police Officer, or authorized representative of the Town, the landowner, renter or lessee will be presumed to not have knowingly permitted the placing, depositing, dumping or throwing of the materials or substances.

(b) Any indication of ownership found in litter shall be *prima facie* evidence that the person identified violated the provisions of this section: *Provided*, That no inference may be drawn solely from the presence of any logo, trademark, trade name or other similar mass reproduced things of identifying character appearing on the found litter.

(c) Every person who is convicted of or pleads guilty to disposing of litter in violation of subsection (a) of this section shall pay a civil penalty in the sum of not less than one hundred dollars nor more than one thousand dollars as costs for clean up, investigation and prosecution of the case, in addition to any other court costs that the court is otherwise required by law to impose upon a convicted person.

The clerk of the court in which these additional costs are imposed shall, on or before the last day of each month, transmit fifty percent of a civil penalty received pursuant to this ordinance to the State Treasurer for deposit in the State Treasury to the credit of a special revenue fund to be known as the Litter Control Fund in accordance with the provisions of section four, article fifteen-A, chapter twenty-two of the *West Virginia Code*.

(d) The remaining fifty percent of each civil penalty collected pursuant to this section shall be transmitted to the Town. Moneys shall be expended by the Town for the purpose of litter prevention, clean up and enforcement. The Town shall cooperate with the county or regional solid waste authority serving the Lincoln County to develop a coordinated litter control program pursuant to section eight, article four, chapter twenty-two-c of the *West Virginia Code*.

SECTION 2. EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its passage as provided by law.

Passed on First Reading June 2, 2008

Passed on Second Reading July 7, 2008

s/s 
TOWN CLERK

§ 20-7-26. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

(a) (1) No person shall place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter as defined in section twenty-four [§ 20-7-24] of this article, in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the state or within one hundred feet of the waters of this state, except in a proper litter or other solid waste receptacle.

(2) It is unlawful for any person to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter from a motor vehicle or other conveyance or to perform any act which constitutes a violation of the motor vehicle laws contained in section fourteen [§ 17C-14-14], article fourteen, chapter seventeen-c of this code.

(3) If any litter is placed, deposited, dumped, discharged, thrown or caused to be placed, deposited, dumped or thrown from a motor vehicle, boat, airplane or other conveyance, it is prima facie evidence that the owner or the operator of the motor vehicle, boat, airplane or other conveyance intended to violate the provisions of this section.

(4) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount not exceeding one hundred pounds in weight or twenty-seven cubic feet in size, is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than fifty dollars nor more than one thousand dollars, or in the discretion of the court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than eight nor more than sixteen hours, or both.

(5) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size is guilty of a misdemeanor. Upon conviction he or she is subject to a fine of not less than five hundred dollars nor more than two thousand dollars, or in the discretion of the court, may be sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than sixteen nor more than thirty-two hours, or both.

(6) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter in an amount greater than five hundred pounds in weight or two hundred sixteen cubic feet in size or any amount which had been collected for commercial purposes, is guilty of a misdemeanor. Upon conviction the person is subject to a fine not less than twenty-five hundred dollars or not more

Effective dates. — Acts 2001, c. 309, provided that the act take effect July 13, 2001.

§ 20-7-23. Local rules.

(a) The provisions of this article, and of other applicable laws of this state, shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by this article shall take place thereon, but nothing in this article shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this article, amendments thereto or rules promulgated thereunder: Provided, That such ordinances or local laws shall be operative only so long as to the extent that they continue to be identical to provisions of this article, amendments thereto or rules promulgated thereunder.

(b) Any subdivision of this state may, at any time, but only after public notice, make formal application to the director for special rules with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules necessary or appropriate.

(c) The director is hereby authorized to promulgate special rules with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state.

(d) The director shall immediately promulgate an emergency rule pursuant to the provisions of section fifteen [§ 29A-3-15], article three, chapter twenty-nine-a of this code providing for the use of electric motors on the waters of Miletree lake in Roane County. (1959, c. 78; 1961, c. 133; 1967, c. 147; 1997, c. 137.)

Code of State Rules References. — Special boating rule for Jennings Randolph Lake. 58CSR29, effective May 20, 1998.
Boating rule. 58CSR25, effective June 5, 2000.

Special boating regulations, 58CSR26, effective April 16, 1998.
Special motorboating regulations, 58CSR27, effective June 5, 2000.

PART III. WEST VIRGINIA LITTER CONTROL PROGRAM.

§ 20-7-24. Definitions.

As used in sections twenty-five and twenty-six [§§ 20-7-25 and 20-7-26] of this article, unless the context requires a different meaning:

(a) "Collected for commercial purposes" means taking solid waste for disposal from any person for remuneration regardless of whether or not the person taking the solid waste is a common carrier by motor vehicle governed by article two [§§ 24A-2-1 et seq.], chapter twenty-four-a of this code.

(b) "Court" means any circuit, magistrate or municipal court.

(c) "Litter" means all waste material including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof, or any

other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

(d) "Litter receptacle" means those containers suitable for the depositing of litter at each respective public area designated by the director's rules promulgated pursuant to subdivision eight, subsection (a), section twenty-five [§ 20-7-25] of this article.

(e) "Public area" means an area outside of a municipality, including public road and highway rights-of-way, parks and recreation areas owned or controlled by this state or any county of this state, or an area held open for unrestricted access by the general public.

(f) "Waters of the state" means generally, without limitation, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds, impounding reservoirs, springs, wells, watercourses and wetlands. (1985, c. 114; 2001, c. 193.)

Effect of amendment of 2001. — Acts and added (f); in (d), substituted "director's rules" for "director's regulations", and "county of this state" for "county thereof". 2001, c. 193, effective June 26, 2001, added the subsection designations; inserted (a) and (b).

§ 20-7-25. West Virginia litter control and recycling programs; additional duties of director; grants to counties and municipalities; and regulations relating thereto.

(a) In addition to all other powers, duties and responsibilities granted and assigned to the director of the department of natural resources in this chapter and elsewhere by law, the director, in the administration of the West Virginia litter control program created by this section, shall:

(1) Coordinate all industry and business organizations seeking to aid in the litter control and recycling effort;

(2) Cooperate with all local governments to accomplish coordination of local litter control and recycling efforts;

(3) Encourage, organize, coordinate and increase public awareness of and participation in all voluntary litter control and recycling campaigns, including citizen litter watch programs, seeking to focus the attention of the public on the litter control and recycling programs of the state and local governments and of private recycling centers;

(4) Recommend to local governing bodies that they adopt ordinances similar to the provisions of section twenty-six [§ 20-7-26] of this article;

(5) Investigate the methods and success of techniques of litter control, removal and disposal utilized in other states, and develop, encourage, organize and coordinate local litter control programs funded by grants awarded pursuant to subsection (b) of this section utilizing such successful techniques;

(6) Investigate the availability of, and apply for, funds available from any and all private or public sources to be used in the litter control program created by this section;

(7) Promulgate regulations pursuant to article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code establishing criteria for the awarding of