

TOWN OF WEST HAMLIN, WEST VIRGINIA

ORDINANCE NO. 19

AN ORDINANCE TO ADOPT THE STATE OF WEST VIRGINIA CODE REGARDING CELL
PHONE USAGE AS ORDINANCE NO. 19

WEST VIRGINIA CODE

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-1. Unattended motor vehicle; penalty.

(a) No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key, and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-14-2. Limitations on backing; penalty.

(a) The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-14-3.

Repealed.

Acts, 1971 Reg. Sess., Ch. 95.

§17C-14-4. Obstruction to driver's view or driving mechanism; penalty.

(a) No person shall drive a vehicle when it is so loaded as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle or streetcar shall ride in such position as to interfere with the driver's or operator's view ahead or to the sides, or to interfere with his or her control over the driving mechanism of the vehicle or streetcar.

(c) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-14-5. Passengers in seat with operator; penalty.

(a) No more than three persons including the operator shall ride or be permitted by such operator to ride in the seat with the operator of any motor vehicle while said motor vehicle is being operated on the streets or highways of this state: *Provided*, That the limitation of this section shall not apply to a truck cab or truck crew compartment properly designed for the occupancy of four persons including the operator, and so designated on the registration card by the division of motor vehicles.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-14-6. Passengers on running board; penalty.

(a) No passenger shall ride nor shall the operator permit any passenger to ride on the running boards of any motor vehicle while such vehicle is being operated on the streets or highways of this state.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-14-7. Driving on mountain highways; penalty.

(a) The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near the right-hand edge of the highway as reasonably possible and, upon approaching any curve where the view is obstructed within a distance of two hundred feet along the highway, shall give audible warning with the horn of such motor vehicle.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-14-8. Coasting prohibited; penalty.

(a) The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears of such vehicle in neutral.

(b) The driver of a commercial motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.

(c) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-14-9. Following authorized emergency vehicles; penalty.

(a) The driver of any vehicle other than one on official business may not follow any authorized emergency vehicle traveling in response to a fire alarm or other emergency closer than five hundred feet or drive into or park such vehicle within the block where such authorized emergency vehicle has stopped in answer to a fire alarm or other emergency.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-14-9a. Approaching authorized emergency vehicles; penalties.

(a) The driver of any vehicle approaching a stationary authorized emergency vehicle, when the authorized emergency vehicle is giving a signal by displaying alternately flashing red, red and white, blue, or red and blue lights or amber or yellow warning lights, shall:

(1) Proceed with due caution, yield the right-of-way by making a lane change not adjacent to that of the authorized emergency vehicle, if possible with regard to safety and traffic conditions, if on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the approaching vehicle and reduce speed to a safe level for road conditions; or

(2) Proceed with due caution, reduce the speed of the vehicle, maintaining a safe speed not to exceed fifteen miles per hour on any nondivided highway or street and twenty-five miles per hour on any divided highway depending on road conditions, if changing lanes would be impossible or unsafe.

(b) (1) Any person who violates any subsection of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in the county or regional jail not more than sixty days, or both fined and imprisoned.

(2) If violation of this section results in property damage in addition to any other penalty imposed, driving privileges of the persons causing the property damage shall be suspended for ninety days.

(3) If violation of this section results in injury to another person in addition to any other penalty imposed, the driving privileges of the person causing the injury shall be suspended for six months.

(4) If violation of this section results in the death of another person in addition to any other penalty imposed, the driving privileges of the person causing the death shall be suspended for two years.

(5) Any person who violates any provision of this section and while doing so also violates section two, article five of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall, in addition to the penalties set out in section two of said article and this section, be fined not less than one thousand dollars nor more than five thousand dollars, or confined in the county or regional jail for a period not more than six months, or both fined and imprisoned.

§17C-14-10. Crossing fire hose; penalty.

(a) No streetcar or vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private driveway, or streetcar track, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

§17C-14-11. Putting glass, etc., on highway.

(a) No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure any person, animal, or vehicle upon such highway.

(b) Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(c) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

§17C-14-12. School bus rules.

(a) The West Virginia board of education by and with the advice of the motor vehicle commissioner shall adopt and enforce rules consistent with this chapter, including the provisions of subsection (c), section nineteen, article fifteen of this chapter, to govern the design and operation of all school buses used for the transportation of school children when owned and operated by any county board of education or privately owned and operated under contract with any county board of education in this state and these rules shall by reference be made a part of any such contract with a county board of education. Every county board of education, its officers and employees, and every person employed under contract by a county board of education shall be subject to these rules.

(b) Any officer or employee of any county board of education who violates any of said rules or who fails to include the obligation to comply with said rules in any contract executed by him or her on behalf of a county board of education is guilty of misconduct and subject to removal from office or employment. Any person operating a school bus under contract with a county board of education who fails to comply with any of said rules is guilty of breach of contract and the contract shall be canceled after notice and hearing by the responsible officers of the county board of education.

§17C-14-13. Vehicles parked on private property; penalty.

(a) It shall be unlawful for any driver of a vehicle to stop, park or leave standing unattended any vehicle on a private road or driveway or on private property without having express or implied permission from the owner, tenant or lessee of such land.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

(c) The owner, tenant or lessee of such private road or driveway or private property may move, or have moved, any vehicle stopped, parked or left standing unattended on his or her private road, driveway, or private property as above prohibited without any liability for the cost of moving any vehicle, nor shall he or she be liable to the owner of the vehicle for any damage done to such vehicle in moving it, unless the owner, tenant or lessee of such private road or driveway or private property was negligent in removing or authorizing the removal of the vehicle. The owner of such vehicle shall be responsible to the persons removing such vehicle for paying all removal costs. Any person who removes any vehicle under the provisions of this section shall notify the West Virginia state police of such action, and, if such vehicle is removed within a municipality, shall, in addition notify the police department of such municipality.

§17C-14-13a. Police officers authorized to conduct investigations on private property.

Notwithstanding any provision of law to the contrary, nothing may prohibit any duly authorized municipal police officers, county deputy sheriffs or members of the department of public safety from entering upon private lands in order to investigate a motor vehicle accident when said private lands are open to the use of the public at-large for any purpose.

§17C-14-14. Unlawful to litter from motor vehicle; penalty; rule making.

(a) It is unlawful for any driver or passenger of a motor vehicle or other conveyance to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown, any litter from a motor vehicle or other conveyance 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.

(b) For purposes of this section, "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.

(c) In addition to any penalty imposed for littering under the provisions of article fifteen-a, chapter twenty-two of this code, any driver of a motor vehicle or other conveyance convicted of violating this section shall have three points assessed against his or her driver's license.

(d) The Commissioner shall assess points against the driver's license of any driver of a motor vehicle or other conveyance found guilty of violating this section upon receiving notice from a circuit clerk, magistrate court or municipal court of this state of the conviction. Circuit clerks, magistrate courts and municipal courts of this state shall promptly notify the Commissioner of the convictions.

(e) When there is more than one occupant in a motor vehicle or other conveyance and it cannot be determined which occupant is responsible for violating this section, the driver shall be presumed to be responsible for the violation.

(f) The Commissioner of the Division of Motor Vehicles shall propose or amend legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the purposes of this section.

§17C-14-15. Prohibited use of an electronic communications device

driving without handheld features; definitions; exceptions; penalties.

(a) Except as provided in subsection (c) of this section, a person may not drive or operate a motor vehicle on a public street or highway while:

(1) Texting; or

(2) Using a cell phone or other electronic communications device, unless the use is accomplished by hands-free equipment.

(b) For purposes of this section, the following terms shall mean:

(1) "Cell phone" shall mean a cellular, analog, wireless or digital telephone.

(2) "Driving" or "operating a motor vehicle" means operating a motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays, but does not include operating a motor vehicle after the driver has moved the vehicle to the side of, or off, a highway and halted in a location where the vehicle can safely remain stationary.

(3) "Electronic communication device" means a cell telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal

communication device, two-way messaging device, electronic game, or portable computing device. For the purposes of this section, an "electronic communication device" does not include:

(A) Voice radios, mobile radios, land mobile radios, commercial mobile radios or two way radios with the capability to transmit and receive voice transmissions utilizing a push-to-talk or press-to-transmit function; or

(B) Other voice radios used by a law-enforcement officer, an emergency services provider, an employee or agent of public safety organizations, first responders, Amateur Radio Operators (HAM) licensed by the Federal Communications Commission and school bus operators.

(4) "Engaging in a call" means when a person talks into or listens on an electronic communication device, but shall not include when a person dials or enters a phone number on a pushpad or screen to initiate the call.

(5) "Hands-free electronic communication device" means an electronic communication device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such electronic communication device, by which a user engages in a call without the use of either hand or both hands.

(6) "Hands-free equipment" means the internal feature or function of a hands-free electronic communication device or the attachment or addition to a hands-free electronic communication device by which a user may engage in a call or text without the use of either hand or both hands.

(7) "Texting" means manually entering alphanumeric text into, or reading text from, an electronic communication device, and includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page or engaging in any other form of electronic text retrieval or entry, for present or future communication. For purposes of this section, "texting" does not include the following actions:

(A) Reading, selecting or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device by the pressing the device in order to initiate or receive a phone call or using voice commands to initiate or receive a telephone call;

(B) Inputting, selecting or reading information on a global positioning system or navigation system; or

(C) Using a device capable of performing multiple functions, including fleet management systems, dispatching devices, smart phones, citizens band radios or music players, for a purpose that is not otherwise prohibited in this section.

(8) "Using a cell phone or other electronic communication device" means holding in a person's hand or hands an electronic communication device while:

(A) Viewing or transmitting images or data;

(B) Playing games;

(C) Composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages or other electronic data; or

(D) Engaging in a call.

(c) Subsection (a) of this section shall not apply to:

(1) A law-enforcement officer, a firefighter, an emergency medical technician, a paramedic or the operator of an authorized emergency vehicle in the performance of their official duties;

(2) A person using an electronic communication device to report to appropriate authorities a fire, a traffic accident, a serious road hazard, or a medical or hazardous materials emergencies.

(3) The activation or deactivation of hands-free equipment or a function of hands-free equipment.

(d) This section does not supersede the provisions of section three-a, article two, chapter seventeen-b of this code or any more restrictive provisions for drivers of commercial motor vehicles prescribed by the provisions of chapter seventeen-e of this code or federal law or rule.

(e) Any person who violates the provisions of subsection (a) of this section is guilty of a traffic offense and, upon conviction thereof, shall for a first offense be fined \$100; for a second offense be fined \$200; and for a third or subsequent offense be fined \$300. No court costs or other fees shall be assessed for a violation of subsection (a) of this section.

(f) Notwithstanding any other provision of this code to the contrary, points may not be entered on any driver's record maintained by the Division of Motor Vehicles as a result of a violation of this section, except for the third and subsequent convictions of the offense, for which three points shall be entered on any driver's record maintained by the Division of Motor Vehicles.

(g) Driving or operating a motor vehicle on a public street or highway while texting shall be enforced as a primary offense. Driving or operating a motor vehicle on a public street or highway while using a cell phone or other electronic communication device without hands-free equipment shall be enforced as a secondary offense until July 1, 2013, when it shall be enforced as a primary offense for purposes of citation.

(h) Within ninety days of the effective date of this section, the Department of Transportation shall cause to be erected signs upon any highway entering the state of West Virginia on which a welcome to West Virginia sign is posted, and any other highway where the Division of Highways deems appropriate, posted at a distance of not more than one mile from each border crossing, each sign to bear an inscription clearly communicating to motorists entering the state that texting, or the use of a wireless communication device without hands-free equipment, is illegal within this state.

(i) Nothing contained in this section shall be construed to authorize seizure of a cell phone or electronic device by any law- enforcement agency.

(j) No policy providing liability coverage for personal lines insurance shall contain a provision which may be used to deny coverage or exclude payment of any legal damages recoverable by law for injuries proximately caused by a violation of this section, as long as such amounts are within the coverage limits of the insured. *Note: WV Code updated with legislation passed through the 2013 1st Special Session*
The WV Code Online is an unofficial copy of the annotated WV Code, provided as a convenience. It has NOT been edited for publication, and is not in any way official or authoritative.

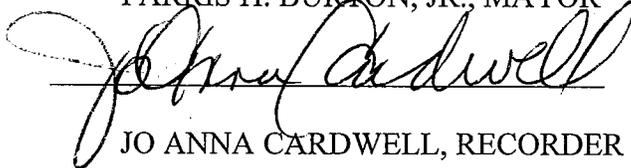
FIRST READING: **SEPTEMBER 2, 2014**

SECOND READING: **OCTOBER 6, 2014**

APPROVED AND ADOPTED THIS 6TH DAY OF OCTOBER, 2014.

ATTEST: _____

FARRIS H. BURTON, JR., MAYOR

A handwritten signature in cursive script, appearing to read "Jo Anna Cardwell", written over a horizontal line.

JO ANNA CARDWELL, RECORDER