

CHAPTER ONE HUNDRED AND SEVENTY THREE  
OF THREE ACTS OF THE LEGISLATURE OF 1872

An act to amend the charter of the town of Bath,  
in the County of Morgan

(Passed February 28, 1872)

Be it enacted by the Legislature of West Virginia:

1. That the town of Bath, in the County of Morgan, as originally laid off into lots, streets and alleys, and as the same may hereafter be further laid off and extended into lots, streets and alleys, shall be and remain a town incorporated by the name of the "Town of Bath", and as such shall have perpetual succession, and common seal, and by that name may sue and be sued, plead and be impleaded, contract and be contracted with, and may purchase, take and hold real and personal estate needful for the purposes of the said corporation.
2. There shall be a mayor, recorder, and five councilmen, who together, shall form a common council.
3. All the corporate powers of the said town shall be exercised by the said council, or under their authority, except when otherwise provided.
4. The mayor, recorder, and common council must be resident in said town and entitled to vote for members of the common council. Their term of office shall be for one year, and until their successors shall have been duly elected and qualified.
5. The mayor, recorder, and councilmen shall be elected by the Citizens of the said town, who may be qualified to vote under this act.
6. The first election under this act shall be held on the first Saturday in May, 1872, at the Court House in said town, under the supervision of any Justice of Morgan County, and annually, thereafter, there shall be an election on the same day of each year, at such place, and under such supervision, rules, and regulations as the council may prescribe. The person conducting each elections shall grant a certificate to the person elected, whose terms of office shall commence on the first day of June thereafter. All such elections shall be governed by the laws in force for the time being, so far as applicable, receive an equal number of votes for the same office the person or persons under whose supervision the election was held shall decide by lot, which of them shall be returned elected, and shall make return accordingly. All contested elections shall be heard and determined by the council for the time being.
7. All persons resident in said town for three months next preceding the day of election, and qualified to vote for members of the legislature of this state, and none others, shall be entitled to vote for members of said council.



8. Whenever a vacancy shall occur from any cause, in the office of mayor, recorder, or councilmen, the council for the time shall by a vote of majority of those present fill the vacancy for the unexpired term.

9. There shall be a sergeant, an assessor, and a commissioner of the streets of said town, who shall be appointed by the council thereof, and hold their offices during its pleasure. The sergeant shall be ex-officio treasurer of said town. The offices of the recorder and assessor may be held by the same person, or other wise, as the council may from time to time determine.

10. The mayor, recorder, and councilmen, and other officers provided for by this act, shall each before entering upon the duties of his office take and subscribe an oath that he will support the constitution of the United States, and the constitution of this state, and faithfully and impartially discharge the duties of his office so long as he shall continue therein. Said oath or affirmation may be taken before any person legally authorized to administer oaths, or before the mayor or recorder of said town.

11. The council shall be presided over by the mayor, or in his absence by the recorder or one of the councilmen, selected by the council.

12. The council shall be caused to be kept in a well bound book, an accurate record of all its proceedings, by-laws, acts, orders and resolutions, which shall be fully indexed, and open to the inspection of the citizens of the town.

13. The proceedings of each meeting of the council shall be read and corrected, if erroneous, at the succeeding meeting, and signed by the person presiding for the time being.

14. Upon the call of any member of the council, the yeas and nays shall be called, upon any question, and recorded in the journal. The presiding officer may vote as a member of the council, and in all cases of a tie the person presiding shall give the casting vote.

15. The said council shall have power to re-survey said town, and for this purpose may employ a competent engineer, to open new streets, and extend, widen, and repair old streets; to curb and pave streets, side-walks and gutters, and to alter, improve and light the same, and shall have control of all the avenues for public use in said town, to have the same kept in good order and free from obstructions on or over them; to order and direct the paving and curbing of all sidewalks and foot-ways for public use, in said town, to be done and kept in good order by the owners or occupants of the adjacent property; to establish and regulate markets, to prescribe the time for holding the same, and what articles shall be sold only therein; to prevent injury or annoyance to the public or individuals, from anything dangerous, offensive or unwholesome; to prevent hogs, cattle, horses and other animals, and fowls of every kind from going at large in said town; to protect places of divine worship; to cause be abated anything which in the opinion of a majority, of the whole council shall be a nuisance; to regulate the keeping of gun-powder, and other combustibles; to provide for the burial of the dead, and for this purpose, may acquire and hold the necessary land for a cemetery, near, or convenient, to said town, and provide for its improvement and security; to provide for the regular building of houses and other structures in said town; to provide for shade and ornamental trees; to provide for the making of division fences and the



drainage of lots; to make regulations for guarding against danger and damage from fires; to protect the citizens and property of said town, and to preserve peace and good order therein, and for this purpose to appoint, when necessary, a police force, to assist the sergeant in the discharge of his duties; to prescribe the powers and define the duties of the officers appointed by the council, fix their time of service and compensation, require and take from them bonds, when deemed necessary, payable to the said town by its corporate name, with such sureties, and in such penalty, as the council shall see fit, conditioned for the faithful discharge of their duties, and remove them at pleasure; to erect or authorize, or prohibit, the erection of gas-works or water works in, or near said town; to provide for the purity of the water, and the healthfulness of the town; to regulate and provide for the weighing and measuring of hay, coal, wood and other articles sold, or for sale, in said town, and regulate the transportation thereof through the streets; to provide a revenue for the said town, and appropriate the same to its expenses; to provide for the annual assessment of the taxable persons and property in said town; to adopt rules and regulations for the transaction of business, and for the government and regulation of its own body; and generally, to do all such things as they may deem necessary and proper to promote the interest, prosperity, peace and good order of the people of the said town.

16. To carry into effect these enumerated powers, and all other powers conferred upon the said town, or its council, expressly, or by implication, by this or any future act of the legislature of the state, and the said council shall have power to make and pass all needful order, by-laws, ordinances, resolutions, rules and regulations, not contrary to the constitution and laws of this state, and to prescribe, impose and enforce reasonable fines, penalties and imprisonment to the county jail, or such other place as they may provide, for a term not exceeding thirty days, for violations thereof; such fines, penalties and imprisonment, shall be recovered and enforced under the judgment of the mayor, or the persons lawfully exercising his functions. And the council, with the consent of the proper authorities of the county of Morgan, entered of record, may use the jail of said county for any purposes for which the use of a jail may be needed by them.

17. The council shall cause to be annually made up and entered on its journal, an accurate estimate of all sums which are, or may become lawfully chargeable on said town, and which ought to be paid within one year, and it shall order a levy of so much as may in its opinion be necessary to pay the same.

18. The levy so ordered shall be upon all male persons, resident in said town, over the age of eighteen years, dogs, hogs, and other animals, and all real and personal estate within said town, subject to state or county taxes: Provided, that the tax so levied upon property do not exceed twenty-five cents on every one hundred dollars of the value thereof, upon persons one dollar and fifty cents per head and upon dogs three dollars per head.

19. Whenever anything for which a state license is to be done in said town, the council may require a town license therefor, and may impose a tax thereon for the use of the town; and the council may in any case require from the person licensed a bond with such sureties, and in such penalty and with such conditions as it may deem proper, and may revoke such license at any time, if the conditions of such bond be broken. A no license to sell spirituous liquors, wine, ale, beer, porter, or drinks of like nature within said town, or within one mile thereof shall be granted by the board of supervisors of Morgan County without the consent of the municipal authorities of said town.



20. The sergeant shall collect the town taxes, levies and licenses and after thirty days from the time they are placed in his hands for collection, he may distrain and sell therefor, in like manner as the officers collecting the state taxes may do, and he shall have in all other respects the same power to enforce the payment and collection thereof. He shall do and perform all the other acts pertaining to the office of sergeant of a corporation, and of a police officer within said town. And he shall have all the powers, rights and privileges within the corporate jurisdiction of said town, in regard to the arrest of persons, the collection of claims, and the execution, levying and return of process, that can be legally exercised by a constable, and he shall be entitled to the same compensation therefore; and he and his sureties shall be liable to all the fines, penalties and forfeitures that a constable is legally liable to for any failure or dereliction in his office, to be recovered in the same manner, and in the same courts that such fines, penalties and forfeitures are recovered against a constable.

21. There shall be a lien on real estate for the town taxes assessed thereon, from the commencement of the year from which they are assessed. Such lien shall have priority over all other liens, except the lien for taxes due the state, and may be enforced by the council in the same manner provided for by law for the enforcement of the lien for county taxes, or in such other manner as the council may by ordinance prescribe.

22. The mayor shall be the chief executive officer of the said town. He shall take care that all orders, by-laws, ordinances, acts and resolutions of the council are faithfully executed. He shall be ex-officio, a justice and conservator of the peace within the municipal jurisdiction of the said town, and shall within the same, possess and exercise all the jurisdiction, powers and duties vested by law in justices, and shall in all respects be subject to, and governed by the laws in force, for the time being. In relation to justices. He shall have control of the police of said town, and may appoint special police officers when he deems it necessary, and it shall be his duty especially to see that the peace and good order of the town are preserved, and that persons and property therein are protected, and to this end he may cause the arrest and detention of all riotous and disorderly person, before issuing his warrant therefor. He shall have power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof, and in default of such payment, he may commit the part to prison until the fine and costs are paid, but the term of imprisonment in such case shall not exceed thirty days. He shall receive a compensation for his services, to be fixed by the council, which shall not be increased during the term for which he shall have been elected.

23. The recorder shall keep a journal of the proceedings of the council, and have charge of and preserve the records of the town. In the absence of the mayor, or during any vacancy in the office of mayor, he shall perform the duties of mayor, and be invested with all his powers.

24. The sergeant, as treasurer, shall have charge of all moneys belonging to the said corporation; and no money shall be paid out by him, except as it shall have been appropriated by the council; he shall pay the same upon the certificate or recorder, or, in his absence, upon the certificate of the mayor, and not otherwise. If he fails to collect, account for, and pay over all, or any part of the moneys the shall come into his hands belonging to said town, when thereto required by the council, it shall be lawful for the



council to recover the same by motion in the corporate name of said town, in any court of Morgan County, or where the sum does not exceed one hundred dollars, before the justice of said county having jurisdiction over the said town.

25. It shall be the duty of the assessor to make an assessment of the persons and property within said town, subject to taxation, substantially in the manner and form in which such assessments are made by the assessor of the County, and to return the same to the council, on or before the first day of July in each year.

26. It shall be the duty of the commissioner of streets to superintend the opening and repair of roads, streets, alleys, sidewalks, foot ways, drains and gutters, within said town, and to put and keep the same in good repair, and to carry into execution all the resolutions, orders and ordinances of the council in relation thereto; and for this purpose, he shall have all the powers and perform all the duties, by law conferred upon, and required of, surveyors of roads in a county, and shall be subject to the same pains and penalties, imposed bylaw upon such surveyors, for neglect of duty. And the said town, and taxable persons and property therein, shall be exempt from all expenses and liabilities for the construction of repairs of roads or bridges outside of said town.

27. All acts and resolutions, either of the general assembly of Virginia, of the legislature of West Virginia, in conflict with the provisions of this act are hereby repealed.

## **TOWN CHARTER**

**Editor's note:** -- The legislature, in its 1969 revision and consolidation of chapters 8 and 8A of the Code of West Virginia into a new chapter 8, recognized, in section 8-1-6, "that when the provisions of existing special legislative charters are compared with and are considered in the light of the provisions of this chapter, (i.e., the new chapter 8), there are five basic possibilities as to the relationship between such charter provisions and the provisions of this chapter, namely:

1. As to any particular charter provisions, such charter provisions may be inconsistent or in conflict with the pertinent provisions of this chapter;
2. Although relating to the same subject matter and although not consistent or in conflict with any provisions of this chapter, certain charter provisions may be sufficiently different from pertinent provisions of this chapter as to indicate, as a matter of practical construction, that either the charter provisions or the provisions of this chapter, but may not both, should be applicable;
3. Although varying in certain respects, certain charter provisions may be similar to and in essential harmony with corresponding provisions of this chapter;
4. As to any particular charter provisions, there may be no counterpart charter provisions."

**Section 8-1-6**, therefore, sets forth certain rules to be applied, in addition to the usual and ordinary rules of statutory construction, with respect to construction and applicability of legislative charters, and it is suggested that users of this town code refer to West Virginia Code 8-1-6, in determining the present construction and applicability of any portion of the town charter to any given situation.

**-See WV Code 8-1-6-**



## **ORDINANCE A**

### **Amending and Supplementing certain provisions of the Charter relative to licenses and privilege taxes.**

Councilman Jack M. Hunter presented the following Resolution and requested its immediate consideration and adoption as an ordinance of the Town of Bath:

**WHEREAS**, the Charter for the Town of Bath granted by the West Virginia Legislature in 1872 and known as Chapter 173 of the Acts of the Legislature of 1872, gives rather wide powers to the common council of the Town of Bath in the matter of enacting licenses and privilege taxes, however, Chapter 8 of the official Code of West Virginia (1931) applies to towns of the same classification as the Town of Bath, and Section 10 of Article 4 of said Chapter 8, permits the Town of Bath to adopt certain applicable provision or provisions of said Chapter 8, and it is thought advisable for the common council of the Town of Bath to adopt Section 10 of Article 4 of said chapter 8, as a part of the charter of said Town of Bath and thereby incorporate said Section 10 in and as a part of said Charter; now therefore.

**BE IT ORDAINED** by the Common Council of the Town of Bath, --

That from and after the effective date of this Ordinance, Section 10 of Article 4 of Chapter 8 of the official Code of West Virginia (1931), shall be adopted as part and parcel of the Charter of the Town of Bath, and thereafter, said Section 10 shall be a part of the general powers of the Council, and together with the general powers enumerated in said Charter, the same shall become a part of the plenary power and authority of this Council to be exercised by ordinance or resolution as the case may require.

(Passed and became effective as of September 17, 1940)

## ORDINANCE B

### Amending and Supplementing certain provisions of the Charter relative to elections, eligibility and terms Of municipal officers.

Councilman Jack M. Hunter, moved the immediate consideration leading to the adoption of the following Ordinance.

WHEREAS, under the Charter for the Town of bath granted by West Virginia Legislature in 1872 and known as Chapter 173 of the Acts of the Legislature of 1872, find the time of the election of the Mayor, Recorder and Councilman as the first Saturday in May of each year (Section 6), with the terms of the officers beginning on the first day of June thereafter (Section 6), and continuing one year and until their successors have been duly elected and qualified (Section 4); and, the said Charter (Section 4) and a subsequent Ordinance further providing for certain qualifications for said Mayor, Recorder and Councilmen; which provisions of said Charter and said prior Ordinances are now antiquated and not in keeping with the fiscal year established by the State or compatible with the (recent) provisions of Article 3 of Chapter 8 of the official Code of West Virginia; and

WHEREAS, in the interest of municipal economy and more in keeping with the town and fiscal policies of the State, it is thought advisable for the Common Council of the Town of Bath to adopt Section 4, 9 and 12 of Article 3 of said Chapter 8, as part and parcel of the said Chapter of the Town of Bath and thereby make applicable the provisions of said Section 4, 9 and 12 of Article 3, Chapter 8 of said Code, the same to operate as amendments to the Charter; now therefore.

BE IT ORDAINED BY the Common Council of the Town of Bath, --

That from and after the effective date of this Ordinance, Sections 4, 9 and 12 of Article 3 of chapter 8 of the official Code of West Virginia (1931) shall be adopted as part and parcel of the Charter of the town of Bath, the provisions of said Sections to operate as amendments to said Charter, providing (hereafter) that the regular elections for officers of the Town of Bath shall be held biennially on the first Tuesday in June (said Section 4), and, that said officers must be residents of said Town of Bath and must be legal voters entitled to vote for members of its Council, and for the year proceeding their elections must have been assessed with and paid taxes upon at least one hundred dollars worth of real or personal property there in (said Section 9) and further providing for the duration of the terms of said officers, the same to begin on the first day of July following election and shall be for two years (said Section 12).

Passed March 18, 1941. Approved by Legislature