WEST VIRGINIA CODE CHAPTER 8 ARTICLE 10

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PART I. MAYOR.

§8-10-1. Powers and duties of mayor.

When not otherwise provided by charter provision or general law, the mayor of every municipality shall be the chief executive officer of such municipality, shall have the powers and authority granted in this section, and shall see that the ordinances, orders, bylaws, acts, resolutions, rules and regulations of the governing body thereof are faithfully executed. He shall have jurisdiction to hear and determine any and all alleged violations thereof and to convict and sentence persons therefor. He shall also, until January 1, 1977, be ex officio a justice and conservator of the peace within the municipality, and shall, within the same, have and exercise all of the powers, both civil and criminal, and perform all duties vested by law in a justice of the peace, except that he shall have no jurisdiction in civil cases or causes of action arising without the corporate limits of the municipality. He shall have, until January 1, 1977, the same power to issue attachments in civil suits as a justice of county has, though the cause of action arose without the corporate limits of municipality, but he shall have no power to try the same and such attachments shall be returnable and be heard before some justice of his county. Upon complaint he shall have authority to issue a search warrant in connection with the violation of a municipal ordinance. Any search warrant, warrant of arrest or other process issued by him may be directed to the chief of police or any member of the police department or force of the municipality, and the same may be executed at any place within the county or counties in which the municipality is located. He shall have control of the police of the municipality and may appoint special police officers whenever he deems it necessary, except when otherwise provided by law, and subject to the police civil service provisions of article fourteen of this chapter if such civil service provisions are applicable to his municipality, and it shall be his duty especially to see that the peace and good order of the municipality 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 individuals in the municipality 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 party in default to the jail of the county or counties in which such municipality is located, or other place of imprisonment within the corporate limits of such municipality, if there be one, until the fine or penalty and costs shall be paid, but the term of imprisonment in such case shall not exceed thirty days. He shall, from time to time, recommend to the governing body such measures as he may deem needful for the welfare of the municipality. The expense of maintaining any individual committed to a county jail by him, except it be to answer an indictment, or, until January 1, 1977, be under the provisions of sections eight and nine, article eighteen, chapter fifty of this code, shall be paid by the municipality and taxed as part of the costs of the proceeding.

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§8-10-1a. Authority to hire special counsel; consent to other representation.

Notwithstanding any charter provision to the contrary, the governing body of every municipality shall have plenary power and authority by ordinance to authorize the mayor to employ within the limit of funds available for such purpose, in lieu of or in addition to the municipal attorney or municipal solicitor and any assistant municipal attorneys or assistant municipal solicitors, an attorney or firm of attorneys as special municipal counsel to represent the municipality in connection with any legal matter or matters. The ordinance authorizing such employment shall be the consent on behalf of the municipality to such attorney or firm of attorneys to represent other clients in other legal matters involving such municipality, but at the time of representation of any such other client in any such other legal matter in controversy directly involving such municipality, such attorney or firm of attorneys shall file with the recorder as a public record a statement of disclosure identifying such other client and the nature of the matter in controversy directly involving such municipality.

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§8-10-1b. Authority to appoint police chief; reinstating to previous rank.

(a) Unless otherwise provided by charter, the mayor of a Class III city or Class IV town or village that has a paid police department that is not subject to the civil services provisions set out in article fourteen of this chapter, may appoint a chief of police.

(b) A Class III city or Class IV town or village may provide by ordinance whether the individual appointed chief of police who held a position as a member of the paid police department prior to his or her appointment as chief of police shall be reinstated to the officer's previous rank following his or her term as chief of police.

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§8-10-2. Municipal court for municipalities.

(a) Notwithstanding any charter provision to the contrary, any city may provide by charter provision and any municipality may provide by ordinance for the creation and maintenance of a municipal court, for the appointment or election of an officer to be known as municipal court judge and for his or her compensation, and authorize the exercise by the court or judge of the jurisdiction and the judicial powers, authority and duties set forth in section one of this article and similar or related judicial powers, authority and duties enumerated in any applicable charter provisions, as set forth in the charter or ordinance. Additionally, any city may provide by charter provision and any municipality may provide by ordinance, that in the absence of or in the case of the inability of the municipal court judge to perform his or her duties, the municipal court clerk or other official designated by charter or ordinance may act as municipal court judge: Provided, That the municipal court clerk or other official designated by charter or ordinance to act as municipal court judge shall comply with the requirements set forth in subsections (b) and (c) of this section, as well as any other requirements that the city by charter provision or the municipality by ordinance may require.

(b) Any person who makes application for appointment to, or who files to become a candidate in any election for municipal judge, shall first submit to a criminal background check, to be conducted by the State Police. The cost of the criminal background check shall be paid by the applicant or candidate. The result of each background check conducted in accordance with this section shall be forwarded to the municipal court clerk or recorder whose duty it is to review the results and confirm the eligibility of the applicant or candidate to serve as a municipal judge. No person convicted of a felony or any misdemeanor crime set forth in articles eight, eight-a, eight-b, eight-c or eight-d, chapter sixty-one, of this code is eligible to become a municipal judge.

(c) Any person who assumes the duties of municipal court judge who has not been admitted to practice law in this state shall attend and complete the next available course of instruction in rudimentary principles of law and procedure. The course shall be conducted by the municipal league or a like association whose members include more than one half of the chartered cities and municipalities of this state. The instruction must be performed by or with the services of an attorney licensed to practice law in this state for at least three years. Any municipal court judge shall, additionally, be required to attend a course, on an annual basis for the purpose of continuing education: Provided, That the forgoing additional education requirement does not apply to municipal judges who are attorneys admitted to practice in this state. The cost of any course referred to in this section shall be paid by the municipality that employs the municipal judge.

(d) Only a defendant who has been charged with an offense for which a period of confinement in jail may be imposed is entitled to a trial by jury. If a municipal court judge determines, upon demand of a defendant, to conduct a trial by jury in a criminal matter, it shall follow the procedures set forth in the rules of criminal procedure for magistrate courts promulgated by the Supreme Court of Appeals, except that the jury in municipal court shall

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consist of twelve members.

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§8-10-2a. Payment of fines by electronic payments, credit cards, cash, money orders, or certified checks.

A municipal court may accept electronic payments, credit cards, cash, money order, or certified checks for all costs, fines, forfeitures, restitution, or penalties electronically, by mail, or in person. Any charges made by the credit company shall be paid by the person responsible for paying the cost, fine, fee, restitution, or penalty.

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§8-10-2b. Payment plan; failure to pay will result in late fee and judgment lien; suspension of licenses for failure to pay fines and costs or failure to appear in court.

(a) Upon request and subject to the following requirements, the municipal court clerk or, upon a judgment rendered on appeal, the clerk shall establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by the court for a motor vehicle violation as defined in §17B-3-3a of this code, a criminal offense as defined in §17B-3-3c of this code, or other applicable municipal ordinances, so long as the person signs and files with the clerk an affidavit stating that he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

(1) A $25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than five equal monthly payments;

(2) Unless incarcerated, a person must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan upon the entry of the order assessing the costs, fines, forfeitures, restitution, or penalties; and

(3) If the person is incarcerated, he or she must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan within 30 calendar days after release.

(b) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of a payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of municipal clerks, and municipal clerks shall use the payment plan form and affidavit form developed by the Supreme Court of Appeals when establishing payment plans.

(c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the dates on which such payments are due; (C) the amount due for each payment; (D) all acceptable payment methods; and (E) the circumstances under which the person may receive a late fee, have a judgment lien recorded against him or her, or have the debt sent to collections for nonpayment; and

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the person’s annual net income divided by 12, or $10, whichever is greater: *Provided*, That if this calculation results in a payment plan lasting more than three years, the monthly payments shall be set by dividing the total amount owed by 36.

(3) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

(d)(1) The clerk may assess a $10 late fee each month if a person fails to comply with the

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terms of a payment plan and if any payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If after 90 days, a payment has not been received, the clerk may do one or both of the following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(e)(1) If after 90 days of a judgment a person fails to enroll in a payment plan and fails to pay their costs, fines, forfeitures, restitution, or penalties, the clerk may assess a $10 late fee and shall notify the person of the following:

(A) That he or she is 90 days past due in the payment of costs, fines, forfeitures, restitution, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a $10 late fee has been assessed; and

(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection a payment has not been received, the clerk may do one or both of the following:

(A) Record a judgment lien as described in subsection (f) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments

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collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount.

(f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county in which the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(g) Any driver's license suspension entered by the Division of Motor Vehicles prior to July 1, 2016, for the failure to appear or otherwise respond in court or for nonpayment of costs, fines, forfeitures, restitution, or penalties is null and void. A person whose driver's license was suspended on or after July 1, 2016, but prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties and a $25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) of this section and the payment of a $25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

(h) If a person charged with a motor vehicle violation as defined in §17B-3-3a of this code or criminal offense fails to appear or otherwise respond in court, the municipal court clerk shall notify the Division of Motor Vehicles of the failure to appear: *Provided*, That notwithstanding any other provision of this code to the contrary, for residents of this state, the municipal court clerk shall wait at least 90 days from the date of the person's failure to appear or otherwise respond before notifying the Division of Motor Vehicles thereof. Upon notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the person appears as required.

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PART III. RECORDER AND MUNICIPAL CLERK.

§8-10-3. Powers and duties of recorder.

It shall be the duty of the recorder of every municipality to keep the journal of the proceedings of the governing body thereof, and he shall have charge of and preserve the records of the municipality. Unless otherwise provided by charter provision or general law, whenever the mayor is unable because of illness or absence from the municipality to perform the duties of his office, and during any vacancy in the office of mayor, the recorder shall perform the duties of the mayor and be invested with all of his power and authority.

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§8-10-4. Powers and duties of recorder or clerk relating to warrants, oaths, sureties and bonds.

Any municipality may provide by charter provision and ordinance, or notwithstanding a charter provision to the contrary, a municipality may provide by ordinance, that the governing body may vest in the recorder, assistant recorder, municipal clerk or deputy municipal clerk, the authority to issue warrants for arrest, to administer oaths, and to accept and approve sureties and bonds, and any such ordinance shall provide for the appointment of such person by confirmation of the governing body and for the removal of such authority by action of the governing body: Provided, That such person may only issue warrants, administer oaths, or accept and approve sureties and bonds, in the absence of the mayor, or if there be a police court or municipal judge, in the absence of such police court or municipal judge.

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