WEST VIRGINIA CODE CHAPTER 8 ARTICLE 11

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§8-11-1. Ordinances to make municipal powers effective; penalties imposed under judgment of mayor or police court or municipal judge; right to injunctive relief; right to maintain action to collect fines; additional assessment of costs.

(a) To carry into effect the powers and authority conferred upon any municipality or its governing body by the provisions of this chapter, or any past or future act of the Legislature of this state, the governing body has plenary power and authority to:

(1) Make and pass all needful ordinances, orders, bylaws, acts, resolutions, rules and regulations not contrary to the Constitution and laws of this state; and

(2) Prescribe reasonable penalties for violation of its ordinances, orders, bylaws, acts, resolutions, rules and regulations, in the form of fines, forfeitures and confinement in the county or regional jail or the place of confinement in the municipality, if there is one, for a term not exceeding thirty days.

(b) The fines, forfeitures and confinement shall be recovered, imposed or enforced under the judgment of the mayor of the municipality or the individual lawfully exercising the mayor's functions, or the police court judge or municipal court judge of a city, if there is one, and may be suspended upon reasonable conditions as may be imposed by the mayor, other authorized individual or judge.

(c) Any municipality may also maintain a civil action in the name of the municipality in the circuit court of the county in which the municipality or the major portion of the territory of the municipality is located to obtain an injunction to compel compliance with, or to enjoin a violation or threatened violation of, any ordinance of the municipality, and the circuit court has jurisdiction to grant the relief sought. A certified transcript of a judgment for a fine rendered by a municipal court may be filed in the office of the clerk of a circuit court and docketed in the judgment lien book kept in the office of the clerk of the county commission in the same manner and with the same effect as the filing and docketing of a certified transcript of judgment rendered by a magistrate court as provided for in section two, article six, chapter fifty of this code. The judgment shall include costs assessed against the defendant.

(d) In addition to any other costs which may be lawfully imposed, an additional cost shall be imposed in an amount of not less than $42 for a traffic offense constituting a moving violation, regardless of whether the penalty for the violation provides for a period of incarceration, and for any other offense for which the ordinance prescribing the offense provides for a period of incarceration. Of the $42 imposed as an additional cost, $2 are administrative costs to be retained by the municipality, and $40 shall be paid into the regional jail and correctional facility development fund in the State Treasury in accordance with section one-a of this article.

(e) Execution shall be by fieri facias issued by the clerk of the circuit court in the same manner as writs are issued on judgments for a fine rendered by circuit courts or other courts

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of record under the provisions of section eleven, article four, chapter sixty-two of this code.

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§8-11-1a. Disposition of criminal costs into State Treasury account for Regional Jail and Correctional Facility Authority fund.

The clerk of each municipal court, or other person designated to receive fines and costs, shall at the end of each month pay into the Regional Jail and Correctional Facility Authority fund in the State Treasury an amount equal to $40 of the costs collected in each proceeding involving a traffic offense constituting a moving violation, regardless of whether the penalty for the violation provides for a period of incarceration, or any other offense for which the ordinance prescribing the offense provides for a period of incarceration: Provided, That in a case where a defendant has failed to pay all costs assessed against him or her, no payment may be made to the Regional Jail and Correctional Facility Authority fund until the defendant has paid all costs which, when paid, are available for the use and benefit of the municipality.

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§8-11-1b. Additional costs in certain criminal proceedings.

In each criminal case before a mayor or in the municipal court of a municipality in which the defendant is convicted, whether by plea or at trial, under the provisions of a municipal ordinance which has the same elements as an offense described in section two, article five, chapter seventeen-c of this code or section eighteen-b, article seven, chapter twenty of this code, there shall be imposed, in addition to other costs, fines, forfeitures or penalties as may be allowed by law, costs in the amount of $55. The clerk of each municipal court, or other person designated to receive fines and costs, shall, for purposes of further defraying the cost to the municipality of enforcing the provisions of the ordinance or ordinances described in this section and related provisions, deposit these moneys in the General Revenue Fund of the municipality. The provisions of this section shall be effective after June 30, 2004.

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§8-11-2. Validity of ordinances delegating discretion.

The fact that an ordinance vests in the governing body or some other body or officer a discretion to do, or refuse to do, a given thing, shall not invalidate such ordinance when it would be impracticable to lay down by ordinance for all cases a uniform guide for exercising such discretion. This section shall not be construed to mean that a delegation of discretion in any other case shall necessarily invalidate an ordinance. However, if, in any case, a delegated discretion is exercised in an arbitrary or discriminatory manner, such ordinance, as so applied, shall be unlawful and void.

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§8-11-3. Cases requiring enactment of ordinance.

In the following enumerated cases, the action of a governing body shall, except where otherwise provided in this code, be by ordinance:

(1) Levying taxes or providing for the collection of fees of any kind;

(2) Requiring a license to do business;

(3) Relating to offenses and penalties;

(4) Authorizing the issuance of bonds or other forms of indebtedness;

(5) Providing for a public improvement;

(6) Providing for the purchase of private property by the municipality or for the sale of property belonging to the municipality;

(7) Laying out or vacating a public street, avenue, road, alley or way;

(8) Relating to planning and zoning;

(9) Granting franchises to public utilities;

(10) Providing for a contractual or other agreement with another jurisdiction; and

(11) Relating to such other matters as the charter may require.

The action of a governing body shall also be by ordinance in any other case in which an ordinance is required by the provisions of this code.

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§8-11-4. Ordinance procedures.

(a) Notwithstanding any charter provision to the contrary, which was in effect on the effective date of this section, it may not be necessary, except where otherwise provided in this code, for the governing body of any municipality to publish in a newspaper any proposed ordinance prior to the adoption thereof or any enacted ordinance subsequent to the adoption thereof, and any and all ordinances of every municipality shall be adopted in accordance with the following requirements, except where different or additional requirements are specified in other provisions of this code, in which event such other different or additional requirements shall be applicable:

(1) A proposed ordinance shall be read by title at not less than two meetings of the governing body with at least one week intervening between each meeting, unless a member of the governing body demands that the ordinance be read in full at one or both meetings. If such demand is made, the ordinance shall be read in full as demanded.

(2) At least five days before the meeting at which a proposed ordinance, the principal object of which is the raising of revenue for the municipality, is to be finally adopted, the governing body shall cause notice of the proposed adoption of the proposed ordinance to be published as a Class I-0 legal advertisement in compliance with §59-3-1 *et seq*. of this code, and the publication area for the publication shall be the municipality. The notice shall state the subject matter and general title or titles of the proposed ordinance, the date, time, and place of the proposed final vote on adoption, and the place or places within the municipality where the proposed ordinance may be inspected by the public. A reasonable number of copies of the proposed ordinance shall be kept at such place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(3) A proposed ordinance may not be materially amended at the same meeting at which finally adopted. A proposed ordinance to increase water and/or sewer service rates shall contain language that: (i) The rate increase may not be effective until 45 days following the passage of the ordinance; and (ii) the rate increase shall take effect for service rendered on or after the effective date.

(b) Notwithstanding any charter provision to the contrary, which was in effect on the effective date of this section, the governing body of any municipality may adopt, by ordinance, building codes, housing codes, plumbing codes, sanitary codes, electrical codes, fire prevention codes, or any other technical codes dealing with general public health, safety or welfare, or a combination of the same, or a comprehensive code of ordinances, in the manner prescribed in this subsection. Before any such ordinance shall be adopted, the code shall be either printed or typewritten and shall be presented in pamphlet form to the governing body of the municipality at a regular meeting, and copies of the code shall be made available for public inspection. The ordinance adopting the code may not set out the code in full, but shall merely identify the code. The vote on adoption of the ordinance shall be the same as on any other ordinance. After adoption of the ordinance, the code or codes

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shall be certified by the mayor and shall be filed as a permanent record in the office of the recorder, who may not be required to transcribe and record the code in the ordinance book as other ordinances are transcribed and recorded. Consistent with the provisions of subsection (a) of this section, it is not necessary that any such ordinance, either as proposed or after adoption, be published in any newspaper, and it is not necessary that the code itself be so published, but before final adoption of any such proposed ordinance, notice of the proposed adoption of the ordinance and code shall be given by publication as herein provided for ordinances the principal object of which is the raising of revenue for the municipality, which notice shall also state where, within the municipality, the code or codes will be available for public inspection.

(c) By a charter framed and adopted, revision of a charter as a whole, or a charter amendment or amendments, as the case may be, subsequent to the effective date of this section, a city may require any or all ordinances to be published in a newspaper prior to the adoption thereof, may expressly adopt the provisions of this section, may specify other additional requirements for the enactment of ordinances, or may prescribe a procedure for the enactment of ordinances in greater detail than prescribed in this section, but a city may not, except in an emergency as specified in subsection (d) of this section or except as otherwise provided in this code, lessen or reduce the requirements of this section.

(d) The governing body of a municipality may enact an ordinance without complying with the rules prescribed in this section only: (1) In the case of a pressing public emergency making procedure in accordance with the provisions of this section dangerous to the public health, safety, or morals, and by affirmative vote of two thirds of the members elected to the governing body; or (2) when otherwise provided in this code. The nature of any such emergency shall be set out in full in the ordinance.

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§8-11-5. Prejudgment alternative disposition of certain traffic offenses.

(a) Municipal courts are hereby authorized to establish a prejudgment alternative disposition procedure for traffic offenses over which the court has jurisdiction.

(b) Under a prejudgment disposition procedure authorized by subsection (a) of this section, if a person is found guilty of a traffic offense, the municipal court may, with the person's consent, withhold for a reasonable time not to exceed one hundred eighty days the entry of a judgment of conviction so that the person may attend a driver safety education course designated by the municipal court. If the person attends said course, the municipal court, if satisfied with the person's participation in the course, shall, without entering a judgment of conviction, dismiss the proceeding against the person.

(c) It shall be a condition of any prejudgment alternative disposition authorized by the provisions of this section that the person pay any fine assessed by the court and pay all fees and costs required to be paid by any provision of this code where a person is convicted of a criminal traffic offense. No municipal court shall utilize any prejudgment alternative disposition procedure unless it collects such fees and costs as are required by any provision of this code and transmits the moneys collected as required by law. No municipal court shall utilize any prejudgment alternative disposition procedure unless it conforms with the requirements of this section.

(d) The procedure authorized by the provisions of this section shall not be available to any person who:

(1) Holds a commercial driver's license issued by this state in accordance with chapter seventeen-e of this code, or who holds a commercial driver's license issued by any other state or jurisdiction;

(2) Is arrested while operating a commercial motor vehicle as defined in chapter seventeen-e of this code; or

(3) Is arrested for driving under the influence of alcohol or drugs or any other offense for which a mandatory period of confinement in jail is required.

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