WEST VIRGINIA CODE CHAPTER 8 ARTICLE 4

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PART I. FRAMING AND ADOPTING CHARTER -- GENERAL.

§8-4-1. Initiation of proceedings for framing a charter.

(a) The governing body of a city may provide by ordinance for the submission to the qualified voters of the city at a general election or at a regular municipal election, or at a special municipal election if the governing body by the affirmative vote of two thirds of its members shall determine and specify that a special municipal election is necessary, of the question, "Shall a charter be framed by representatives of the people?".

(b) The governing body of a city shall, upon petition therefor bearing the signatures, written in their own handwriting, of fifteen percent of the qualified voters of the city, if a Class I or Class II city, or ten percent of the qualified voters of the city, if a Class III city, provide by ordinance for the submission to the qualified voters of the city at a general election or at a regular municipal election of the question, "Shall a charter be framed by representatives of the people?".

(c) The governing body of a city shall provide by ordinance for a special municipal election on said question if a petition bearing the signatures, written in their own handwriting, of fifteen percent of the qualified voters of the city, if a Class I or Class II city, or ten percent of the qualified voters of the city, if a Class III city, expressly requesting that a special municipal election be called for the purpose be presented to the governing body more than one hundred twenty days prior to the date of the next general election or next regular municipal election.

(d) If the question is to be submitted at a general election or a regular municipal election and not a special municipal election, then in determining the general election or regular municipal election at which the question shall be submitted, the following provisions of this subsection (d) shall govern and control:

(1) If the question is to be submitted under the provisions of subsection (a) of this section, the question shall be submitted at the next general election or next regular municipal election, whichever first occurs after the ordinance is adopted under the provisions of said subsection (a); or

(2) If the question is to be submitted under the provisions of subsection (b) of this section, the question shall be submitted at the next general election or next regular municipal election, whichever first occurs after the petition is filed under the provisions of said subsection (b), if there is at least one hundred twenty days between the filing of the petition and the date of the election, and otherwise, at the next general election or next regular municipal election occurring after said interval of at least one hundred twenty days after the filing of said petition.

(e) Any special municipal election held in accordance with the provisions of subsection (a) of this section shall be held not less than thirty nor more than sixty days after the ordinance

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providing for same shall have been adopted, and any special municipal election held in accordance with the provisions of subsection (b) of this section shall be held not less than thirty nor more than sixty days after the petition shall have been presented to the governing body.

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§8-4-2. Charter board; number of members; qualifications of members; nominations; notice; ballots and ballot labels; election of a charter board; effect of vote on question as to charter board.

The ordinance providing for submission to the qualified voters of the city of the question of whether a charter shall be framed shall make provision for voting for a charter board concurrently with the voting on the question of whether a charter shall be framed. A charter board shall consist of eleven members in a Class I or Class II city and seven members in a Class III city. Members shall be elected at large and shall receive no compensation for their services, but shall be reimbursed by the city for all reasonable and necessary expenses actually incurred in the discharge of their duties. Any individual who has been a resident and qualified voter of the city for at least two years prior to the date of election of members shall be eligible for membership on said charter board.

In the initiatory ordinance, the governing body of a Class I or Class II city may nominate five candidates, and that of a Class III city three candidates, for membership on the charter board. Other nominations, or all of the nominations if the governing body does not make any, shall be made by petition to the governing body bearing the signatures, written in their own handwriting, of not less than two hundred qualified voters of the city. Nominating petitions may be filed at any time after the adoption of the initiatory ordinance and not less than twenty days prior to the date of the election. In the event of a vacancy in the nominations which shall reduce the number of candidates below the number of members to be elected, the vacancy shall be filled by the governing body.

Notice of any election at which the question of whether a charter shall be framed shall be voted upon shall consist of the initiatory ordinance and a brief prefatory statement setting out the date and hours of the election, naming the candidates, if any, nominated by the governing body for membership on the charter board as above provided and stating how and within what time limit other nominations may be made. The governing body shall cause such notice to be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city. The first publication shall be made not less than thirty days prior to the date of the election.

Each qualified voter entitled to vote on the question of framing a charter may cast as many votes for members of the charter board as there are members to be elected. He may cumulate all his votes for one candidate or distribute them among the several candidates as he sees fit.

The ballots, or ballot labels where voting machines are used, pertaining to the question of framing a charter shall be separate from the ballots or ballot labels for members of the charter board. The position of the names of the candidates upon the ballots or voting machines shall be interchanged, as provided in the general election laws of this state. A voter who shall vote "No" on the question may, nevertheless, vote for such candidates. The ballots or voting machine directions shall bear instructions to this effect, and also

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instructions which shall indicate the number of candidates for which the voter may vote (which shall be the same as the number of members to be elected), and that cumulative voting is permitted. Special ballots or ballot labels without party designation shall be used at every election held under this article even though the election is held at the same time as some other election. The ballots or ballot labels shall be prepared by or at the direction of the recorder of the city.

After such an election, the legal votes on the question shall be counted and canvassed. If a majority of the legal votes cast on the question be in the negative, the proceeding shall be at an end, and the question shall not be submitted again, without a petition of the qualified voters as provided for in subsection (b), section one of this article, for at least two years. If a majority of the legal votes cast on the question be in the affirmative, the legal votes cast for members of the charter board shall be counted and canvassed and the candidates, in the number to be chosen, who receive the highest number of votes shall be declared elected.

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§8-4-3. Provisions of article three made applicable; duties and responsibilities of county court under article three placed upon governing body under this article; duties and responsibilities of charter board; exceptions.

All of the pertinent provisions of article three of this chapter pertaining to the charter drafting and adoption process for a newly incorporated city shall be as fully applicable to proceedings under this article four as if such provisions were set forth in extensor herein, except that (1) the publication area for all notices required to be published shall be the city, and (2) the duties and responsibilities placed upon the county court in said article three shall be performed and discharged under this article four by the governing body of the city. A charter board elected in accordance with the provisions of this article four for the purpose of framing a charter, and the members thereof, shall be governed by the provisions of said article three relating to a charter board for a newly incorporated city, and the members thereof, and it and the members thereof shall carry out all of the duties and responsibilities imposed upon a charter board, and the members thereof, elected in accordance with the provisions of said article three, except that (1) the board, under the provisions of this article four, shall file one signed copy of the proposed charter with the clerk of the county court of the county in which the city or the major portion of the territory thereof is located and two signed copies of the proposed charter with the recorder of the city, and (2) if the proposed charter under the provisions of this article four is rejected by a majority of the legal votes cast at the election thereon, the duties and responsibilities of such board shall be at an end, nor shall a new charter board be then elected.

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§8-4-4. Submission of proposed charter to qualified voters.

The proposed charter shall be submitted to the qualified voters of the city in like fashion and with like notice as provided for a proposed charter of a newly incorporated city as set forth in article three of this chapter, except that the proposed charter shall be submitted at the next regular municipal election instead of a special election, unless (1) the governing body by the affirmative vote of two thirds of its members shall determine and specify that a special municipal election is necessary, or (2) a petition bearing the signatures, written in their own handwriting, of fifteen percent of the qualified voters of the city, if a Class I or Class II city, or ten percent of the qualified voters of the city, if a Class III city, expressly requesting that a special municipal election be called for the purpose be presented to the governing body more than one hundred twenty days prior to the date of the next regular municipal election.

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§8-4-5. Approval of charter; effective date; certification; judicial notice; recordation; effect of rejection.

If the proposed charter shall be approved by a majority of the legal votes cast at the election thereon, the charter shall take effect on July 1 next after the date of the election. If approved as aforesaid, one of the signed copies of the charter on file with the recorder of the city, together with a certified copy of the declaration of the results of the election showing the total legal votes cast for and against approval, shall be certified forthwith by such recorder to the Clerk of the House of Delegates, in his capacity as keeper of the rolls. The same shall be preserved by said Clerk of the House of Delegates as an authentic public record. After the effective date of a charter so filed, all courts shall take judicial notice of its provisions.

If the charter is approved as aforesaid, a certified copy of the declaration of the results of the election showing the total legal votes cast for and against approval shall be forwarded by the recorder of the city to the clerk of the county commission for filing with the signed copy of the charter previously filed with him.

Rejection of the proposed charter by a majority of the legal votes cast shall have the same effect as a majority vote against the question of framing a charter as specified in section two of this article, and no further effort shall be made to have a charter approved until the question of framing a charter is again submitted to the qualified voters of the city and is approved by a majority vote, subject to the two-year limitation set forth in said section two of this article.

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§8-4-6. New charter supersedes existing charter; effect on ordinances and administrative law.

A new charter shall entirely supersede the prior charter of a city. All ordinances and administrative acts or rules theretofore adopted by the governing body or administrative agencies of a city which are in conflict with or are inconsistent with a new charter shall continue in force for sixty days after the effective date of the new charter, unless sooner modified or repealed by competent authority; but at the end of this period shall, to the extent of such conflict or inconsistency, be of no further force or effect.

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Part II. Revising Or Amending A Charter.

§8-4-7. Revising or amending a charter — generally.

A special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former §8A-1-1 *et seq.*, §8-3-1 *et seq.*, or §8-4-1 *et seq*. of this code, as the case may be, may be revised as a whole in like manner as a charter may be framed and adopted under the provisions of §8-4-1 *et seq*. of this code, except that the question submitted shall be "Shall the charter be revised as a whole by representatives of the people?", but no such revision as a whole shall be made within four years of the effective date of such a charter or of the last preceding revision as a whole, whichever be later, as the case may be. A revision as a whole may also be initiated in the manner specified in §8-3-9 of this code or in the manner specified in said section nine considered in pari materia with the provisions of §8-3-9 of this code. If a majority of the legal votes cast on the question be in the negative or if the proposed charter revised as a whole is rejected by a majority of the legal votes cast at the election thereon, the provisions of §8-4-2 and §8-4-3 of this code relating to a negative vote on the question of framing a charter and to rejection of a proposed charter shall govern and control.

The qualified voters of a city may amend a special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former §8A-1-1 *et seq*. of this code, §8-3-1 *et seq*. of this code, or under §8-4-1 *et seq*. of this code, as the case may be, but no amendment shall be made within one year of the effective date of such a charter or of the last preceding revision of such charter as a whole, whichever be later, as the case may be. An amendment or amendments may be initiated in the same manner provided in this article for the framing of a charter, in the manner specified in §8-3-9 of this code, or in the manner specified in said section nine considered in pari materia with the provisions of §8-4-3 of this code. The governing body of a city shall provide by ordinance for a special municipal election to pass upon a proposed charter amendment or amendments if: (1) Such governing body by the affirmative vote of two-thirds of its members shall determine and specify that a special municipal election is necessary; or (2) a petition bearing the signatures, written in their own handwriting, of 15 percent of the qualified voters of the city, if a Class I or Class II city, or 10 percent of the qualified voters of the city, if a Class III city, expressly requesting that a special municipal election be called for the purpose has been filed with the governing body more than 120 days prior to the date of the next regular municipal election. In all other cases, a proposed charter amendment or amendments shall be submitted by ordinance at the next regular municipal election. Any proposed amendment or amendments shall be set out in full in the ordinance submitting same. The date of any special municipal election for the purpose shall be fixed by the ordinance providing for same, but any such special municipal election shall be held not less than 30 nor more than 60 days after such ordinance shall have been adopted. Notice of any election at which a proposed amendment or amendments shall be voted upon shall state the date and hours thereof, and shall set out the proposed amendment or amendments at length or state that copies may be obtained by any qualified voter or any freeholder of the city from a designated person at a stated place, upon

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request. Such notice shall be published as in the case of a notice of an election on the question of whether a charter shall be framed, as specified in §8-4-2 of this code. A charter amendment or amendments approved, or such of them as may be approved, by a majority of the legal votes cast at the election thereon shall take effect on the date that the declaration of the results showing approval by the voters has been made by the governing body and entered in the minutes of the governing body. One copy of the amendment or amendments, together with a certified copy of the declaration of results attached thereto, shall be certified forthwith by the recorder of the city to the Clerk of the House of Delegates, as keeper of the rolls, and another to the clerk of the county commission for recording in the office of such clerk of the county commission. The same shall be preserved by said Clerk of the House of Delegates as an authentic public record. After the effective date of an amendment or amendments so filed, all courts shall take judicial notice of such amendment or amendments.

If a majority of the legal votes cast at the election thereon be against any amendment, such proposed amendment shall not be submitted again, without a petition of the qualified voters as provided for in §8-4-1(b) of this code considered in pari materia with the provisions of this section, for at least one year.

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§8-4-8. Same — An alternate plan.

Whenever the governing body of any city shall deem it expedient to amend the charter of any such city (whether such charter be a special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former §8A-1-1 *et seq.* of this code, under §8-3-1 *et seq.* of this code, or §8-4-1 of this code, as the case may be), it shall, by ordinance, set out in its proper record book the proposed amendment or amendments in full. The governing body shall set a date, time, and place for a public hearing thereon, which date shall be not less than 30 days after the date of the first publication hereinafter required. The governing body shall cause the proposed amendment or amendments, together with a notice of the date, time and place fixed for the hearing thereon, to be published as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the city. The notice shall state that the proposed amendment or amendments shall be considered on the date and at the time and place fixed by the governing body and that any qualified voter or any freeholder of the city may appear and file objections, in writing, and also that if no objections are filed the said amendment or amendments shall become operative on and after a date fixed in the notice, which date shall be not less than 10 days after the date of the hearing. If no objections are filed, or if objections are filed and are withdrawn at the time of the hearing, or within 10 days thereafter, or if the proposed amendment or amendments are made solely to implement conformity with §8-5-5 and §3-1-31, the governing body shall, by ordinance, adopt the amendment or amendments as an amendment or amendments to the charter, and cause a copy of the amendment or amendments, ordinance, and transcript of the proceedings to be certified to the West Virginia Secretary of State and to be recorded in the office of the clerk of the county commission. The same shall be preserved by the West Virginia Secretary of State as an authentic public record. The amendment or amendments shall take effect on the effective date specified in the notice as aforesaid. After the effective date, all courts shall take judicial notice of such amendment or amendments.

If, on the date and at the time and place set for the hearing, objections to the amendment or amendments are filed and are not withdrawn then or within 10 days thereafter, the governing body may abandon the proposed amendment or amendments to which objections have been filed, or it may submit the proposed amendment or amendments, either as a unit or separately, at the next regular municipal election, or at a special municipal election if such governing body by the affirmative vote of two-thirds of its members shall determine and specify that a special municipal election is necessary and if the date of such regular municipal election shall be more than six months from such date, for ratification or rejection. Notice of any election at which the proposed amendment or amendments shall be voted upon shall state the date and hours thereof and shall set out the proposed amendment or amendments at length or state that copies may be obtained by any qualified voter or any freeholder of the city from a designated person at a stated place, upon request. The governing body shall cause such notice to be published as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the city. The amendment or amendments approved, or such of them

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as may be approved, by a majority of the legal votes cast at the election thereon shall take effect on the date that the declaration of the results showing approval by the voters has been made by the governing body and entered in the minutes of the governing body. One copy of the amendment or amendments, together with a certified copy of the declaration of results attached thereto, shall be certified forthwith by the recorder of the city to the West Virginia Secretary of State and another to the clerk of the county commission for recording in the office of such clerk of the county commission. The same shall be preserved by said West Virginia Secretary of State as an authentic public record. After the effective date of an amendment or amendments so filed, all courts shall take judicial notice of such amendment or amendments. If a majority of the legal votes cast at the election thereon be against any proposed amendment, the same shall not be proposed again under the provisions of this section for at least one year.

The method of charter amendment provided for in this section is not in lieu of but is in addition to the other methods prescribed in this chapter.

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§8-4-9. Submission of alternative provisions.

A charter revision as a whole or a charter amendment or amendments may be proposed with alternative provisions for submission to the qualified voters and the same may be voted upon separately without prejudice to the primary question of whether the proposed charter revision as a whole or the amendment or amendments shall be adopted and without prejudice to the other provisions thereof.

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Part III. Elections; Expenses.

§8-4-10. Conduct of elections; general provisions concerning canvass and declaration of results; election supplies; election officials.

The governing body of a city shall canvass the returns within relatively the same time with reference to an election held under the provisions of this article and in the same manner as county commissions are required to do with respect to general elections, and shall declare the results of any such election. This requirement shall apply to any election held under the provisions of this article, whether it be a special municipal election or voting conducted in conjunction with a general election or a regular municipal election. The canvass and declaration of results shall be entered in the minutes of the governing body on the date made. Unless otherwise provided by charter provision, any such special municipal election or voting conducted in conjunction with a general election or a regular municipal election shall be held and conducted under the supervision at each precinct of three commissioners of election and two clerks who shall be appointed by the governing body and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections, subject, however, in the case of a special municipal election to the provisions of §8-4-11 of this code. For any special municipal election or voting conducted in conjunction with a general election or a regular municipal election, in accordance with the provisions of this article, the governing body shall arrange for and provide at its expense registration books, challenges and other election supplies as provided by law in general elections, and polling places in any such special municipal election or with respect to any such voting conducted in conjunction with a regular municipal election. In the event any commissioner or clerk appointed by the governing body shall fail or refuse to serve, such vacancy may be filled in like manner as such vacancies are filled in general elections under the laws of this state governing general elections, except that the governing body shall act in the place and stead of the county commission. A recount may be had, as in general elections, upon the party or parties desiring such recount providing adequate assurance to the governing body that the party or parties shall pay all costs of such recount.

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§8-4-11. Special election and special municipal election officials.

In any special election upon the question of the approval or rejection of a proposed charter to be held under the provisions of article three of this chapter and in any special municipal election to be held under the provisions of this article four, the proponents and opponents of the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole or the proposed charter amendment or amendments, as the case may be, shall be entitled to representation among the election officials appointed to serve at each polling place. Election officials representing the proponents and opponents shall be designated as follows:

(1) The proponents and opponents, or either, of the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole or the proposed charter amendment or amendments, as the case may be, if organized, may, not less than fifteen days prior to the date fixed for the special election or special municipal election, as the case may be, file with the county court as to a special charter election to be held under the provisions of article three of this chapter or the governing body in all other cases a list of individuals to serve as election officials to represent their organization or organizations and if a list is so filed the county court or governing body, as the case may be, shall appoint as election officials to represent such organization or organizations the individuals so nominated: Provided, That any such organization has as members at least five percent of the qualified voters of the incorporated territory or city, and any such organization, within ten days after the official notice of such special election or special municipal election, as the case may be, was published for the first time, submitted to the county court or governing body, as the case may be, a statement showing the name, officers and members thereof: Provided, however, That no individual shall be a member of more than one such organization; or

(2) If the proponents and opponents, or either, of the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole, or the proposed charter amendment or amendments, as the case may be, are not organized as aforesaid, or if no such list is filed as aforesaid, the county court or governing body, as the case may be, shall, not less than ten days prior to the date fixed for the special election or special municipal election, as the case may be, appoint as representatives of proponents and opponents, or either, as the case may be, an equal number of persons known to be in favor of the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole or the proposed charter amendment or amendments, as the case may be, and of persons known to be opposed to the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole or the proposed charter amendment or amendments, as the case may be, to act as election officials at each polling place.

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§8-4-12. Expenses.

The governing body of a city shall make full provision for all expenses incurred in advertising, holding and conducting any election or voting under the provisions of this article and all other proper expenses incurred in complying with the provisions of this article, including the expenses of a charter board and the members thereof, as specified in section two of this article.

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