WEST VIRGINIA CODE CHAPTER 8 ARTICLE 5

WV Legislature

PART I. FIRST ELECTION OF OFFICERS.

§8-5-1. First election of officers of a city; terms of first officers.

The first election of officers of a city shall be held, conducted, superintended, returned, certified and canvassed in such manner as is provided in article three of this chapter for the first charter election of such city. All officers elected at such first charter election, which first charter election is held after the effective date of this article, shall be elected for a term which shall expire on the thirtieth of June of the second or fourth year following such election, as the charter may provide.

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§8-5-2. First election of officers of a town or village; commissioners of election.

At the time of ordering the issuance of the certificate of incorporation of a town or village as specified in section seven, article two of this chapter, the county court shall appoint three qualified voters of such incorporated territory who shall act as commissioners of election at the first election of officers to be held in such town or village, as hereinafter provided, and, in case they shall fail or refuse to act, such election may be held, conducted, superintended, returned and certified by any three qualified voters of such incorporated territory appointed for that purpose by the qualified voters present.

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§8-5-3. When first election of officers of a town or village held; notice.

The first election of officers of a town or village shall be held within sixty days from the date of the certificate of incorporation issued in accordance with the provisions of section seven, article two of this chapter, and the commissioners of election appointed at the time the order is entered directing issuance of such certificate shall cause notice to be given of the date, time and place of holding such election, which notice shall specify the officers to be voted for, and shall be published within fourteen consecutive days next preceding the date appointed for such election, 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 such town or village.

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§8-5-4. Conducting first election of officers of a town or village; certificate of election; terms of first officers.

Such commissioners, or the individuals acting as such, shall preside and act as commissioners of such election, and all of the laws applicable to the election of district officers shall apply to such election, if not inconsistent with the provisions of this article. Such commissioners shall, within five days after such election, issue a certificate to the individuals elected, which certificate shall be recorded among the records of such town or village. All officers elected at the first election of officers held by a town or village, which first election is held after the effective date of this article, shall be elected for a term which shall expire on the thirtieth of June of the second year following such election.

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§8-5-5. Regular election of officers; establishment of longer terms.

(a) After the first election of officers of a city, town, or village, the regular election of officers shall be held on the same day and in the same manner as prescribed by §3-1-31 of this code.

(b) Any city, town, or village whose charter requires elections to be held on a day and in a manner that conflicts with §3-1-31 of this code shall amend said charter or otherwise revise its governing election provisions to make the requirements set forth in §3-1-31 of this code effective by July 1, 2032. Any amendment or revision authorized by this subsection may be accomplished pursuant to subsection (e) of this section.

(c) Notwithstanding any other provision of this code, including any charter-amendment formalities otherwise applicable under this chapter, a municipality may, for the limited purpose of achieving conformity with §3-1-31 and this section, amend or supersede any charter provision, ordinance, or other local enactment governing (i) the municipal election day and (ii) any transitional term lengths necessary to implement the change in election day, by ordinance adopted under subsection (e) of this section.

(d) Officers of a city may be elected for a four-year term at the same election at which a proposed charter, proposed charter revision, or charter amendment providing for four-year terms is voted upon. The ballots or ballot labels used for the election of officers shall indicate that the officers shall be elected for four-year terms if the proposed charter, revision, or amendment is approved. Officers of a town or village may be elected for a four-year term upon approval by a majority of the legal votes cast at a regular municipal election of a proposition calling for four-year terms. The ballots or ballot labels used for the election of officers shall indicate that the officers shall be elected for four-year terms if the proposition is approved.

(e) Municipalities may stagger and/or change the terms of elected municipal officers. Prior to any changes being made to the terms of elected municipal officers, the procedure to stagger and/or change the terms shall be set by ordinance and shall be approved by a majority of the voters: *Provided*, That to implement conformity with subsections (a) and (b) of this section and §3-1-31, a municipality may, by ordinance adopted by the governing body, provide for the staggering and/or changing of the terms of elected municipal officers without separate submission to the voters: *Provided, however*, That any term-length change for purposes of such conformity is limited to a one-time transitional adjustment, after which the municipality shall return to its regular term structure as otherwise provided by law or local enactment. No ordinance adopted under this subsection may operate to extend the current term of any incumbent elected municipal officer beyond the term for which the officer was elected.

(f) The ordinance adopted pursuant to subsection (e) of this section for conformity with subsections (a) and (b) of this section and §3-1-31 may provide for a one-time transitional shortened or lengthened term for the next term of office commencing after the next election to which the ordinance applies, solely for the purpose of aligning the terms to coincide with

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the same date as a regularly scheduled statewide primary or general election day. Any transitional term established under this subsection shall apply only to that next term, after which the regular term length shall again apply.

An ordinance adopted under this subsection shall be read by title at not fewer than two meetings of the governing body, with at least one week intervening between the meetings. The ordinance shall state that it is a conformity ordinance adopted pursuant to this section for the limited purpose of implementing subsection (b) of this section and §3-1-31.

No additional procedural requirement otherwise applicable to municipal ordinances or charter amendments applies as a condition of adoption or effectiveness of an ordinance under this subsection, including the charter amendment provisions of this chapter (Chapter 8, Article 4) and the general ordinance enactment procedures of this chapter (Chapter 8, Article 11); and no municipal charter provision or local enactment imposing additional procedural requirements shall apply. No submission to the voters, referendum, petition, or charter-amendment election is required for such ordinance to be effective: *Provided*, That any transitional term established under this subsection shall not exceed the regular term by more than 18 months.

(g) Municipalities are required to share in the administrative costs of holding elections with county commissions, but those costs shall not exceed the municipality’s pro rata share of voters registered in the municipality compared with the total voters registered in the county.

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§8-5-5a.

Repealed.

Acts, 1987 Reg. Sess., Ch. 91.

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PART III. CHARTER PROVISIONS PERTAINING TO

ELECTION OF OFFICERS.

§8-5-6. Charter provisions concerning officers and elections, etc.; provisions of general law concerning same.

The charter of every city framed and adopted or revised as a whole under the provisions of article three or article four of this chapter, as the case may be, shall provide a method and time for the filing of certificates of candidacy, nominating candidates, conducting primary and regular municipal elections, and determining and certifying the results of such elections. Except as otherwise provided in the charter of any municipality, the provisions of general law with respect to the method and time for the filing of certificates of candidacy, nominating candidates, conducting primary and regular municipal elections, and determining and certifying the results of such elections, so far as applicable, shall apply to municipal elections: Provided, That the provisions of section thirteen of this article shall be construed as mandatory.

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§8-5-7. Certain officers; wards or election districts; residency and other requirements.

(a) Unless otherwise provided in the charter of a municipality, there shall be elected a mayor, a recorder and council members, who together shall form the governing body of the municipality.

(b) When a municipality has not been divided into wards or election districts, there shall be at least five council members, but when the municipality has been divided into wards or election districts, the governing body may, by ordinance, determine the number of council members to be elected from each ward or election district. When it is considered necessary, the governing body may, by ordinance, increase or decrease the number of wards or election districts and change the boundaries thereof, the wards or election districts to be made as nearly equal as may be, in population, and when the municipality is divided into wards or election districts, or there is an increase or decrease in the number of wards or election districts as aforesaid, the governing body may increase or decrease the number of council members and, in the case of an increase in the number of council members, direct an election to be held at the next regular municipal election in the additional ward or wards or election district or districts so that each ward or election district may have its full number of council members residing therein and may have equal representation on the governing body. When a municipality has been divided into wards or election districts, the governing body may, by ordinance, also provide for the election of council members at large in addition to the council members to be elected from each ward or election district. The provisions of this subsection are applicable to any municipality except to the extent otherwise provided in the charter of the municipality.

(c) Unless otherwise provided by charter provision or ordinance, the mayor, recorder and council members must be residents of the municipality and must be qualified voters entitled to vote for members of its governing body. A city manager in a manager form of government need only be a resident of the city at the time of his or her appointment.

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PART V. OATH OF OFFICE; TERMS OF OFFICE; FILLING VACANCIES.

§8-5-8. Oath of office.

Every person elected or appointed to an office in any municipality shall, unless otherwise provided in the charter thereof, within twenty days after his election or appointment and before he shall enter upon the duties of his office, take and subscribe to the oath of office prescribed for district officers, which may be done before any person authorized by law to administer oaths, or before the mayor or recorder of such municipality. The oath, together with the certificate of the officer administering the same, shall be filed, recorded and preserved in the office of the recorder of the municipality, and a certified copy of such oath and certificate shall be filed and recorded in the office of the clerk of the county court of the county in which the municipality or the major portion of the territory thereof is located.

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§8-5-9. Terms of office.

Except as otherwise provided in the charter of any municipality, the terms of all officers elected after the first election in municipalities holding biennial elections shall commence on July 1, following their election and shall be for two years, and in municipalities holding quadrennial elections the terms of all elected officers shall commence on July 1, following their election and shall be for four years.

All municipal officers, whether elected at the first election of officers or at regular municipal elections, or appointed, shall hold their offices until their successors are elected or appointed and qualified according to law, unless sooner removed from office according to law. Officers in office when this article becomes effective shall hold their offices subject to the provisions of the immediately preceding sentence hereof.

WV Legislature

§8-5-10. Vacancies in elective offices; how filled.

Unless otherwise provided by charter provision or ordinance, when a vacancy shall occur from any cause in any municipal elective office, the vacancy, until the next succeeding regular municipal election and until the qualification of an elected successor, shall be filled by appointment by the governing body from among the residents of the municipality eligible under this article, with a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election: *Provided*, That any such person appointed must have been affiliated with that political party for at least one year prior to the occurrence of the vacancy.

WV Legislature

PART IV. GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES.

§8-5-11. Municipal officers and employees generally.

Subject to the provisions of the Constitution of this state, the provisions of this article, and other applicable provisions of this chapter, any city may by charter provision, and the governing body of any municipality, consistent with the provisions of its charter, if any, may by ordinance, determine and prescribe the officers or positions which are to be filled by election, appointment or employment, the number, method of selection, tenure, qualifications, residency requirements, powers and duties of municipal officers and employees, and the method of filling any vacancies which may occur.

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§8-5-12. Compensation of officers and employees.

(a) Notwithstanding any charter provision to the contrary, the governing body of every municipality shall by ordinance fix or cause to be fixed the salary or compensation of every municipal officer and employee: *Provided*, That the salary of any officer shall not be increased or diminished during his or her term.

(b) The governing body of every municipality shall have plenary power and authority to provide by ordinance for the allowance of time off of officers and employees with pay for vacations and illness and for personnel management incentives, as additional consideration for their services and employment.

(c) No deductions or assignments of earnings shall be allowed for union, labor organization, or club dues or fees from the compensation of officers or employees covered by this section: *Provided*, That this subsection shall not apply to municipal employees covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021.

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§8-5-12a. Public carriage for officers and employees.

Any municipal officer or employee may, or may not, in the discretion of the city manager, mayor or the governing body, be furnished with the use of publicly provided carriage to travel from his residence to his workplace and return: Provided, That such usage is subject to the supervision of such city manager, mayor or governing body and is directly connected with and required by the nature and in the performance of such officer's or employee's duties and responsibilities.

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PART VII. ELECTIONS AND PETITIONS GENERALLY.

§8-5-13. Integration of municipal elections with system of permanent registration.

Notwithstanding any charter provision to the contrary, it is the duty of each city by charter provision or each municipality by ordinance to make provision for integrating the conduct of all municipal elections with the system of "permanent registration of voters" as provided in article two, chapter three of this code.

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§8-5-14. Municipal executive committees; election expenses; applicability of state primary and general election laws; election days.

Except as otherwise provided by charter provision or ordinance or this code, municipal executive committees shall exercise similar functions and be governed by the same laws in regard to municipal primary elections and regular municipal elections as county executive committees in regard to county-state primary and general elections, so far as the same may be applicable. All expenses of conducting municipal primary elections and regular municipal elections shall be paid by the municipality. The provisions of chapter three of this code, referring more particularly to primary elections and general elections, shall, so far as the same can be applied and so far as not otherwise provided by charter provision or ordinance, govern the conduct of municipal primary elections and regular municipal elections, as the case may be. No municipal primary election shall be held on the day of the county-state primary election except as provided in section five of this article nor less than twenty-five days immediately preceding the regular municipal election, unless a shorter period of time is established by charter or ordinance.

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§8-5-15. Tie vote.

Whenever two or more individuals shall receive an equal number of legal votes for the same office, if such number be the highest cast for such office, the individuals under whose supervision the election is held shall decide by lot which of them shall be returned as elected, and shall make their return accordingly.

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§8-5-15a. Special municipal elections not otherwise provided for.

In any instance where there is no statutory, charter or lawful ordinance provision authorizing, relating to or requiring a special municipal election, the governing body of a municipality shall, upon receipt of a proper petition, as hereinafter in this section specified, requesting a special municipal election for a proper governmental purpose, as specified in such petition, forthwith adopt a resolution or ordinance, where procedure by ordinance is required, calling and providing for a special municipal election for such purpose. Such petition must bear the signatures, written in their own handwriting, of not less than twenty percent of the qualified voters of such municipality. Such special municipal election shall be held, superintended and conducted, and the results thereof ascertained, certified, returned and canvassed in the same manner and by the same individuals as elections for municipal officers. In any instance where there is a statutory, charter or lawful ordinance provision authorizing, relating to or requiring a special municipal election upon petition or otherwise, the provisions of this section shall not be applicable and such statutory, charter or lawful ordinance provision shall govern and control in all respects, including without limiting the generality of the foregoing, the requisites of any petition for such special municipal election.

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§8-5-16. Judicial review.

A writ of error shall lie to the circuit court in accordance with the provisions of article three, chapter fifty-eight of this code from any order of a county court ordering an election to be held under the provisions of this chapter. Upon the filing of a petition for a writ of error, all proceedings shall be suspended or stayed pending final adjudication of the matters involved.

The order of any municipality ordering an election to be held under the provisions of this chapter shall be reviewable by the circuit court of the county in which the municipality or the major portion of the territory thereof is located upon certiorari to the governing body thereof, in accordance with the provisions of article three, chapter fifty-three of this code. Upon the filing of a petition for a writ of certiorari, all proceedings shall be suspended or stayed pending final adjudication of the matters involved.

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§8-5-17. Canvassing of elections; contested elections.

All elections ordered and held by a county court under the provisions of this chapter shall be canvassed by such county court. All elections ordered and held by a municipality under the provisions of this chapter shall be canvassed by the governing body of such municipality.

Any contest of a public question election ordered and held by a county court, or by a municipality, under the provisions of this chapter, shall be heard and decided by the county court or governing body of the municipality, as the case may be, and any such contest shall be conducted in the manner to be provided in article seven, chapter three of this code for contests of an election on a public question. Any such election may be contested by a qualified elector or voter or by a freeholder interested therein.

Any contest by any candidate or candidates of an election of charter board members or of the first officers of a city, which election is held under the provisions of article three of this chapter, shall be heard and decided by the county court, and any such contest shall be conducted in the manner provided in said article seven, chapter three of this code for election contests for county or district officers in general elections.

Any contest by any candidate or candidates of an election of charter board members, which election is held under the provisions of article four of this chapter, or of officers of a municipality (other than the first officers of a city) shall be heard and decided by the governing body thereof, and any such contest shall be conducted in the manner provided in said article seven, chapter three of this code for election contests for county or district officers in general elections.

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§8-5-18. Determination as to sufficiency of a petition filed under this chapter.

It shall be the right and duty of the county court, the governing body of a municipality, or other body or officer, to which or to whom any petition is presented under the provisions of this chapter, as the case may be, to determine the sufficiency of any such petition, and where no time limit is prescribed for the making of such determination, the same shall be accomplished within a reasonable period of time. Any such determination, where there is no other express right of judicial review provided, shall be reviewable by the circuit court of the county upon certiorari to the county court, governing body, or other body or officer, as the case may be, in accordance with the provisions of article three, chapter fifty-three of this code; and in the case of a governing body, the appropriate circuit court shall be the circuit court of the county in which the municipality or the major portion of the territory thereof is located.

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PART VIII. CONFLICT OF INTEREST.

§8-5-19. Charter or ordinance provisions pertaining to conflict of interest; penalties for violation thereof.

Every city shall have plenary power and authority to provide by charter provision, and every municipality shall have plenary power and authority to provide by ordinance, that it shall be unlawful for the governing body, or any member thereof, or other officer or officers thereof, to be interested personally, either directly or indirectly, or as a member, manager, officer or stockholder of any partnership, business, firm or corporation, in any contract furnishing material, services or supplies to the municipality, or to any contractor, or workmen for the municipality, or in any manner whatsoever, whereby the taxpayers of such municipality shall become the paymaster, either directly or indirectly, or to adopt any other provisions, deemed appropriate, pertaining to conflict of interest or possible conflict of interest. Any violation of any such charter or ordinance provisions by any member of the governing body or other officer or officers thereof, shall be a misdemeanor, and, upon conviction thereof, such member or officer shall be fined not less than $50 nor more than $500, and shall automatically be removed from office.

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§8-5-20. Triennial audits of certain associations and organizations.

(a) Any voluntary association or other membership organization, whether nonprofit or for profit, the majority of the membership of which is comprised of municipalities of this state or of persons who hold elected or appointed municipal offices in this state, and which annually receives more than $5,000 in public moneys from the various municipalities of this state to pay the membership dues of municipalities or elected or appointed municipal officials, shall file with the secretary of tax and revenue on a triennial basis, beginning July 1, 1997, an audit of the receipt and disbursement of funds. The period covered by the audit shall be the previous three years or for the years since the last such audit.

(b) Any audit required by the provisions of this section shall be performed by an independent certified public accountant.

(c) Any voluntary association or membership organization subject to the provisions of this section which fails or refuses to file an audit shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000.

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