

## **TITLE 10**

### **MUNICIPAL COURT**

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#### **CHAPTER 1 – IN GENERAL**

##### **SECTION 10-101 COURT ESTABLISHMENT TO BE HELD BY MUNICIPAL JUDGE**

There may be in the Town a court which may be called the Municipal Court to be held by the Municipal Judge of the Town.

##### **SECTION 10-102 MUNICIPAL JUDGE**

The Mayor may be the Municipal Judge and in the absence of the Mayor the Town Recorder may exercise the functions of the Municipal Judge; provided that the Mayor may at any time pursuant to the provisions of Section 8-10-2 of the Code of West Virginia appoint a member in good standing of the bar of Kanawha County to the office of Municipal Judge or in the exercise of sound discretion if a suitable member of the bar is not available for such office may appoint a qualified person who is not a member of the bar to the office of Municipal Judge. Town Council must approve by majority vote anyone appointed by the Mayor to be Municipal Judge.

##### **SECTION 10-103 JURISDICTION, POWERS AND DUTIES OF MUNICIPAL COURT AND MUNICIPAL JUDGE**

- (a) The municipal court and the municipal judge shall have the jurisdiction, exercise the powers and perform the duties specified for Mayors, municipal

courts and municipal courts and municipal judges, respectively in Section 8-10-1 and 8-10-2 of the Code of West Virginia amended provided that neither the municipal court nor the municipal judge shall have any jurisdiction in civil cases or causes of action.

- (b) The powers and duties of the municipal judge shall include among other subjects not mentioned herein the following:
- (1) **TRIAL DOCKET.** He shall at the opening of the court a docket on which shall be entered all cases set for trial on that day. The cases shall be numbered progressively in the docket, and the papers in each case entertained by the municipal judge shall be entered upon the docket, setting for the name of the defendant, the charge against him, the name of the officer arresting him, and the disposition made by the municipal judge of the case and the disposition made by him of the defendant, whether discharged, committed to the custody of some officer and the reason therefore or imprisoned and if imprisoned, the term of imprisonment and whether admitted to bail or committed to answer indictment. In each case continuance, if any may be granted, shall be noted; also the amount of all fines imposed, all costs thereto attached, and to whom payable. The docket shall be indexed in the names of the defendants.
  - (2) **APPEAL DOCKET; TRANSCRIPT.** He shall keep an appeal docket in which shall be duly recorded all the proceedings had in any case in which an appeal shall have been made to a circuit court and upon appeal being perfected, he shall make out and certify to the court to which the appeal is taken a full transcript of the proceeding had in the case for which he shall be entitled to collect from the defendant a transcript fee as may be authorized by law; provided that in no case shall the Town or municipal court be required to provide a court stenographer in any case before it. Nothing in this title shall, however, prohibit a defendant from having a hearing transcribed by a certified court stenographer at his own expense.
  - (3) **FINES, COSTS, PROCESSES AND OATHS.** He shall tax all costs in the municipal court and make out all executions for fines, penalties and costs imposed by him, make out and issue all processes of the court and sign then as judge, and administer oaths.
  - (4) **RULES OF PROCEDURES.** He shall have authority to promulgate and enforce rules or procedure not inconsistent with the Constitution of West Virginia or the statute or common law of the state, or this Town Code or other ordinance of the Town or any rule of court established pursuant to state law and which is applicable to municipal courts.

#### **SECTION 10-104 MUNICIPAL COURT CLERK**

The municipal judge with the approval of the Town Council shall appoint or designate a qualified person to be municipal court clerk.

#### **SECTION 10-105 WHO MAY ISSUE TOWN WARRANTS**

In addition to the municipal judge, the Mayor and the Town Recorder shall have authority to issue warrants for all offenses committed against this Code and other Town ordinances.

#### **SECTION 10-106 SESSIONS; BAILIFF**

- (a) The municipal court shall hold not less than one regular session each month at such reasonable hours as shall be specified by the municipal judge in a suitable court room in the Town provided by the Town Council; and all sessions shall be open to the public; provided that the municipal judge may hold hearings and conduct proceedings in his chamber, when in his sound discretion, it is appropriate so to do and is consistent with law.
- (b) The chief of police shall designate a police officer to attend each session of the municipal court to serve as bailiff of the court, to preserve order and decorum in the courtroom and in the immediate vicinity thereof and to execute all processes and orders directed to him by the municipal judge.

#### **SECTION 10-107 COMPULSORY ATTENDANCE OF WITNESSES**

The municipal judge and by his authority the municipal court clerk shall have authority to issue subpoenas for and compel the attendance of any person who may be required to testify as a witness, either for the Town or for a defendant in any pending case. Any person having so been summoned who shall willfully refuse to attend as required by such summons shall be punished as provided in Title 1, Section 1-107 of this Code.

#### **SECTION 10-108 BAIL BOND AND CASH DEPOSITS IN LIEU THEREOF**

Except as may be provided otherwise in any case by the provisions of article 10, Chapter 62 of the Code of West Virginia, as amended, whenever any person is arrested for any violation of any ordinance of the Town or for any offense of which the municipal judge has jurisdiction, it shall be lawful for the municipal judge, Town recorder, municipal court clerk, Mayor, chief of police and the desk sergeant or person in charge of police headquarters to admit such person to bail upon the execution of a bond to the Town in such an amount as in the discretion of the officer will secure the prisoner's presence, conditioned that the accused will appear upon a day named, before the municipal judge of the Town, to await trial; and every such bond taken shall be filed as

soon as practicable with the municipal court clerk by the officer approving and taking such bond; and the municipal judge, Town recorder, municipal court clerk, Mayor, chief of police and the desk sergeant or person in charge of police headquarters shall each have the power to approve any bond taken under the provisions of this section, precedence being given to the ranking officer present at police headquarters when such bond is presented. No person shall be accepted as surety upon any penal bond unless he shall acknowledge the bond before some official duly authorized by this Code or by state law to administer an oath, and shall make oath that he is the owner in fee of real estate situate in Kanawha County and worth the amount of the bond over and above his debts and liabilities; but the officers herein before named in this section are hereby authorized and empowered to accept a deposit in cash of an amount which, in the judgment of the officer accepting the deposit, will be sufficient to cause the prisoner's appearance upon the day required to him before the municipal judge to await trial upon the charge against him. The amount of such deposit shall not be less than a sum sufficient in the judgment of the officer accepting the same to satisfy any reasonable fine and costs, which may be imposed by the municipal judge. In the event any person so released upon bond or such deposit shall fail to appear before the municipal judge for trial at the appointed time, or, having appeared, shall leave the court without awaiting trial, his bond shall be forfeited thereby to the Town, and if a cash deposit has been made to secure his release, the sum so deposited shall be delivered to the municipal judge as soon as may be practicable, not later than the following morning, and by him promptly turned into the Town treasury to the credit of the general fund and accounted for by him in the same manner that fines collected by him are accounted for; and in the event of the forfeiture of a penal bond, the Town treasurer shall forthwith take the steps necessary at law for the collections thereof.

Bail bond cards issued by automobile associations to their members shall be accepted for traffic violations in accord with the terms of such cards.

Nothing in this section shall be construed to prohibit the admission of a person to bail upon his own recognizance when such is authorized by law and when the officer, in the exercise of sound discretion, considers it proper to do so.

#### **SECTION 10-109 REQUISITES AND DISPOSITION OF CASH DEPOSITS POSTED IN LIEU OF BAIL BOND**

No cash bond shall be accepted by any officer authorized to accept such bond unless the prisoner and the officer authorized to accept it are present at police headquarters or at the place where the prisoner is held in custody. The money deposited as security for any person's appearance shall be deposited with the desk sergeant at police headquarters, to be by him safely kept until the next regular session of the municipal court, when it shall be turned over by the desk sergeant who received it to the judge of the municipal court, and by the judge disposed of as required by the bond and this and the preceding section.

**SECTION 10-110 UNAUTHORIZED ACCEPTANCE OR APPROVAL OF CASH BOND; APPROVAL OF BOND IN FELONY CASES**

If any officer shall accept or approve any cash bond at any place or in any other manner than is herein provided for and authorized, such unauthorized acceptance or approval shall constitute good cause for his suspension or removal or the reprimand or fining of such officer after a hearing in the charge by the Town Council. In case of the arrest of any person upon a charge of a felony, the bond for his release, if approved, shall only be approved by magistrates of Kanawha County or the judge of the circuit court of Kanawha County, and no officer of the Town shall be authorized to admit to bail any person charged with felony.

**SECTION 10-111 PERSONS PROHIBITED TO BE SURETY ON BAIL BONDS**

No practicing attorney, officer of the municipal court, or member of the police force shall be accepted as surety on any bond provided for in this article.

**SECTION 10-112 CONTEMPT**

- (a) **WHEN PUNISHMENT AUTHORIZED.** The municipal judge may issue attachments for contempt, and punish summarily, only in the following cases:
- (1) Misbehavior in the presence of his court, or so near thereto as to obstruct the administration of justice.
  - (2) Violence or threats of violence to the municipal judge or any officer, witness or party going thereto, attending or returning from court, for or in respect of any act or proceeding had or to be had in such court.
  - (3) Misbehavior of any officer in his official capacity, in respect to any act or judicial proceeding had or pending before the municipal judge, or any process, order or notice therein.
  - (4) Disobedience or resistance of an officer, witness, party or other person to any lawful process, judgment, order or notice of the municipal judge.
- (b) **ARREST AND PROSECUTION.** An order to arrest may be issued by the municipal judge on which the person charged with the contempt may be taken and brought before him, or such person may be taken in custody by any officer or any person upon the oral order of the municipal judge and held to answer for the contempt. An opportunity must be given the person charged to be heard in defense or explanation of his conduct, and the municipal judge may thereupon discharge him, or adjudge him guilty of the contempt and punish him therefore, by fine or imprisonment or both. The fine shall not exceed Fifty dollars (\$50.00), or the imprisonment five (5) days. The

municipal judge shall not impose a fine for contempt unless the defendant be present in court, or shall have been served with a rule of the court to show cause, on some certain day, and shall have failed to appear and show cause.

- (c) **JUDGMENT AND COMMITMENT.** The conviction for contempt, specifying the particular circumstances of the offense and judgment thereon, must be entered by the municipal judge in his docket. A warrant of commitment for the term of imprisonment adjudged may be issued by the municipal judge commanding an officer to take the offender to the jail or other place designated for the imprisonment of Town prisoners, and the keepers thereof to imprison him therein for such term. The judgment may include, in addition to fines, all costs in the case, including costs of arresting and keeping in prison the offender.

**SECTION 10-113    WHEN CONVICTED DEFENDANT MAY BE ORDERED  
TO PAY FINE AND COSTS IN INSTALLMENTS OR UPON  
OTHER TERMS**

Whenever a person is convicted in the municipal court of a violation of this Code or other ordinance or any rule, regulation, notice or order promulgated pursuant to authority thereof, and such person is sentenced to pay a fine, and it shall appear to the court on its own motion or on motion of the defendant that such defendant is unable to pay such fine forthwith, the court may order the defendant to pay such fine and any costs which the defendant may be required to pay in installments or upon such other terms and conditions or within such period of time as may enable the defendant to pay such fine and costs.