# CITY OF CHARLES TOWN

**ORDINANCE COMMITTEE**
**AGENDA • SEPTEMBER 14, 2023**

**City Council Committee Meeting** **CITY HALL** **6:00 PM**

**101 E Washington Street, Charles Town, WV 25414**

**1. CALL TO ORDER**

**2. NEW BUSINESS**

2.1 : Review and Discuss 171
Article 171 - First Reading Copy to be revised 9_14 meeting.pdf
For 9_14 Ordinance Meeting re_ Article 171.pdf

**3. ADJOURNMENT**

**4. NOTICE: The Public May View the Meeting Live by Clicking on the Event Link at: https://www.charlestownwv.us/government/agendas-and-minutes/**

**Ordinance Committee**
101 East Washington Street
Charles Town, WV 25414

**SCHEDULED**

**AGENDA ITEM (ID # )**

Meeting: 09/14/23
Department: Ordinance Committee
Category: Ordinance
Initiator:

## Review and Discuss 171

Review and Discuss 171

**ATTACHMENTS:**

- Article 171 - First Reading Copy to be revised 9_14 meeting.pdf
- For 9_14 Ordinance Meeting re_ Article 171.pdf

# ARTICLE 171
# Municipal Court


171.01 Jurisdiction, powers and duties
171.02 Docket; Chief of Police
171.03 Search Warrants
171.04 Arrest Warrants
171.05 Failure of accused person to appear for trial
171.06 Continuances
171.07 Judgment of guilty includes judgment for costs
171.08 Enforcement of penalties and costs
171.09 Payment of court costs
171.10 Suspension of execution of judgments
171.11 Appeals
171.12 Contempt of Court
171.13 Jury trials
171.14 Community service in default of fine payment
171.15 Severability


## CROSS REFERENCES

General rights of appeal - see W. Va. Code 8-24-1
Juries - see ADM. Art. 177
Suspension of licenses for failure to appear in court; payment plan; failure to pay fines will result in late fee and judgment lien - see W. Va. Code 62-4-17

### 171.01 JURISDICTION, POWERS, AND DUTIES

The Municipal Court Judge has criminal jurisdiction over violations of the ordinances of the City and exercises all of the powers and duties set forth in the Charles Town City Charter and the West Virginia Code.

### 171.02 DOCKET; CHIEF OF POLICE

The Chief of Police is directed to maintain an orderly docket containing a record of each case brought before the Municipal Court Judge and the resulting judgment. Unless the City Manager, with the approval of Council, appoints some other person, the Chief of Police shall be ex officio Clerk of the Municipal Court.

### 171.03 SEARCH WARRANTS

(a) Any member of the Police Department without an affidavit, or any citizen upon a sworn affidavit, may make a complaint that an offense has been committed. It will then be the function of the Judge of the Municipal Court to issue a warrant, if proper under the law.
(b) If, upon proper complaint, the Municipal Court Judge issues a search warrant(s), they shall be in connection with the violation of any provision of the Codified Ordinances or other City ordinance.

### 171.04 ARREST WARRANTS

(a) Any member of the Police Department without an affidavit, or any citizen upon a sworn affidavit, may make a complaint that an offense has been committed. It will then be the function of the Judge of the Municipal Court to issue a warrant, if proper under the law.
(b) Proceedings before the Municipal Court Judge are conducted by warrant of arrest in the name of the City or by summons, except in the event of contempt of court, or when an offense for which the Municipal Court Judge has jurisdiction is

committed in the presence of said judge or a City police officer. In this event, either the judge or the officer may apprehend or cause the offender to be apprehended.

(c) When a person arrested without a warrant is brought before the Municipal Court Judge, a complaint shall be filed or sworn, a warrant issued and executed, and the same warrant shall be returned to the Municipal Court Judge no later than the commencement of hearing.

**171.05 FAILURE OF ACCUSED PERSON TO APPEAR FOR TRIAL**

(a) If a warrant or summons is executed and returned, and the accused person fails to appear within one hour after the time designated for the trial, the case may proceed to be heard and determined as if the accused were present.

(b) After hearing the evidence, and at their sole discretion, the Municipal Court Judge may issue an order for an officer to arrest the accused person and bring that individual to the court at a designated time to hear judgment in the case.

**171.06 CONTINUANCES**

Continuances may be granted as justice requires.

(a) If a continuance is granted at the request of the accused, they may be required to enter into a recognizance, payable to the City, with approved security, in a sum determined by the Municipal Court Judge. This continuance is conditional upon the individual appearing at the time and place named in the order of continuance to answer further as to the alleged offense. Failing compliance, the accused may be committed to jail until a hearing may be resumed, but such imprisonment shall not continue longer than five days.

(b) If the continuance is requested by a person other than the accused, the accused may be allowed to depart until the time appointed for the trial upon entering into recognizance, payable and conditioned as in Section 171.06(a). The requirement for entering into recognizance may be waived at the discretion of Municipal Court Judge.

(c) In the case of default in any provision of recognizance, such default will be noted on the docket. Additionally, in the event that full payment of security is not made, an action in the name of the City may be made in any court of competent jurisdiction to recover the amount of the penalty against the accused and any additional surety.

**171.07 JUDGMENT OF GUILTY INCLUDES JUDGMENT FOR COSTS**

If judgment is given against the accused in a final hearing, such judgment will include:

(a) Fine(s) as directed by City Charter and West Virginia Code,

(b) Any costs incurred by the City, including the police department

(c) Hearing costs of $50

(d) Fees as required by State or local statute

**171.08 ENFORCEMENT OF PENALTIES AND COSTS**

The Municipal Court Judge shall have power to require immediate payment or issue executions for all fines, penalties, and costs imposed. Upon request and subject to the following requirements, the court clerk shall establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by the court, so long as the person signs and files with the clerk an affidavit stating that he or she is financially unable to pay the amount owed.

(a) 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.

(b) 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 them, or have the debt sent to collections for nonpayment.

(c) 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 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.

(d) The clerk may assess a $10 late fee each month if a person fails to comply with the terms of a payment plan, and if any payment due is not received within 30 days after the due date, and the person:

(i) Is not incarcerated;

(ii) Has not brought the account current;
(iii) Has not made alternative payment arrangements with the court; or
(iv) Has not entered into a revised payment plan with the clerk before the due date.

(e) If, after 90 days, a payment has not been received, the clerk may 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 W. Va State code. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(f) If after 180 days of a judgment a person fails to enroll in a payment plan and fails to pay his or her costs, fines, forfeitures, restitution, or penalties, the clerk may assess a $10 late fee and shall notify the person of the following:
(i) That he or she is 180 days past due in the payment of costs, fines, forfeitures, restitution, or penalties imposed pursuant to a judgment of the court;
(ii) That he or she has failed to enroll in a payment plan;
(iii) Whether a $10 late fee has been assessed; and
(iv) That he or she may 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.

(g) If after 30 days from the issuance of a notice pursuant to subdivision (f) of this subsection, a payment has not been received, the clerk may 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 W. Va. State code.

(h) If a person charged with a criminal offense fails to appear or otherwise respond in court after having received notice to do so, the court shall notify the Division of Motor Vehicles thereof within 15 days of the scheduled date to appear unless such person sooner appears or otherwise responds in court to the satisfaction of the court. Upon such 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.

**171.09 PAYMENT OF COURT COSTS**

(a) If the Municipal Court Judge rules in favor of the person accused, the accused may recover their related costs. In this event, the Judge will direct the City to remit payment to the acquitted party. The judge may also require the City to reimburse the court for any witness fees and any other applicable fees as may be required by state or local statute.

(b) If the Municipal Court Judge rules against the person accused and the costs incurred by the City cannot be collected from them, they shall also be reported by the Municipal Court Judge to the City Manager for payment. The Judge may also require the City to reimburse the court for any witness fees and any other applicable fees as may be required by state or local statute.

**171.10 SUSPENSION OF EXECUTION OF JUDGMENT**

Execution of judgment may be suspended by the Municipal Court Judge upon such terms as may be imposed by Judge and agreed to by the party convicted.

**171.11 APPEALS**

(a) Every person sentenced under this article by the Municipal Court Judge to imprisonment or to the payment of a fine of ten dollars ($10.00) or more shall be allowed an appeal de novo to the County Circuit Court, with the condition that the person appealing will enter into an appeal bond with surety equal to all ordered fines, fees, and costs and abide by any judgment rendered by County Circuit Court.

(b) Any such appeal must be perfected no later than twenty business days from the date after which the sentence is imposed.

(c) If such appeal is taken, the appeal bond and supporting documentation in the case shall be promptly delivered by the City to the Clerk of the Court to which such appeal is taken. If the judgment be against the accused, it shall include the costs incurred in the proceedings before the Municipal Court Judge as well as in the appellate Court.

**171.12 CONTEMPT OF COURT**

Contempt of Court may be charged against an individual for any of the following:

(a) Contemptuous or insolent behavior toward the Judge while engaged in a trial or judicial proceeding;
(b) Any breach of the peace or willful disturbance in the presence of the Judge or so near as to obstruct or interrupt a trial or judicial proceeding;
(c) Violence or threats of violence to the Judge or any party traveling to, attending, or returning from any judicial proceeding before the Court which is intended to obstruct, interrupt, or influence such a proceeding;
(d) Flagrant misbehavior of any officer of the City acting in their official capacity with respect to any action, judicial proceeding, or order of the Court;
(e) Willful resistance by any party to any lawful process or order of the Court. The Judge may, if necessary, issue a warrant of arrest for such person, who shall be given an opportunity to be heard.

In the event such person is found guilty of contempt, the person shall be fined not more than fifty dollars ($50.00) for the first offense. For a second offense pertaining to the same matter the person shall be fined not more than one hundred dollars ($100.00). For the third or any subsequent offense pertaining to the same matter the person shall be fined not more than one hundred dollars ($100.00), or imprisoned not more than ten days, or both. An appeal to the Circuit Court of such conviction shall conform to section 171.11.

**171.13 JURY TRIALS**

In all cases where required by the Charter or Statutes of the State of WV, the Municipal Court Judge shall empanel a jury to hear the evidence and decide the case. The Court shall establish and present rules for the selection and empaneling of jurors in such cases. All costs incurred in connection with jury trials shall be payable by the party against whom judgment is rendered.

**171.14 COMMUNITY SERVICE IN LIEU OF FINE PAYMENT**

The court may review the reasonableness of immediate payment or a payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding fines, forfeitures, or restitution to community service in an amount commensurate with the total imposed.

(a) The minimum wage established by the prevailing federal minimum wage in effect at the time sentencing is imposed shall be used to compute the amount of community service work necessary to extinguish the fine.
(b) The time period for completion of community service shall be set at the discretion of the municipal judge.
(c) At the discretion of the court, the sentence credits may run concurrently or consecutively.
(d) Any community service ordered under this section shall be performed for government entities or charitable or nonprofit entities.
(e) It is the responsibility of the convicted party to arrange the community service with a government entity or an approved 501c3 organization in Charles Town. A list of approved entities is available from City Hall.
(f) Such arrangements must be made, in writing, at City Hall, within 30 days of the conviction.
(g) The individual so sentenced will be supervised by the Chief of Police or their designee. The hours worked will be reported in writing to the Court Clerk.
(h) If safe and practicable, it is preferred that the scope of community service activities serve to recompense the community and offset the damage to property and well-being caused by the convicted party.
(i) Fees and court costs will still be assessed against the convicted party and must be paid at the time of conviction. Only the fine can be commuted via community service.
(j) Failure to complete the full amount of community service in the allotted time will result in the remaining balance still owed by the convicted party to the City of Charles Town and must be paid upon the expiration of the community service term.

**171.15 SEVERABILITY**

The provisions of this article shall be liberally construed to accomplish its objective and purposes. If any provision of this article is held to be invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not otherwise affect or invalidate the other provisions hereto, all of which are hereby declared, and shall be construed, to be separate and severable.

**From Chief Kutcher:**

**I took a look at a few codes this morning and below is what I found in WV Code Chapter 62 Criminal Procedure and Chapter 8. I don't think we need all the information in there, but I would defer to a lawyer to help decide.**
**Hope this helps….**

171.03

Search and Seizure Warrants

§62-1A-3. Same -- Issuance and contents.
A warrant shall issue only upon complaint on oath or affirmation supported by affidavit sworn to or affirmed before the judge or magistrate setting forth the facts establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that there is probable cause to believe that grounds therefor exist, he shall issue a warrant identifying the property and particularly describing the place, or naming or particularly describing the person, to be searched. The warrant shall be directed to the sheriff or any deputy sheriff or constable of the county, to any member of the department of public safety or to any police officer of the municipality wherein the property sought is located, or to any other officer authorized by law to execute search warrants. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified, to seize such property and bring the same before the judge or magistrate issuing the warrant. Such warrant may be executed either in the day or night.

**I do not recall a time when we would have applied for a SW in municipal court. To low of a court for this, but I don't want to handcuff us if a time would arise.**

171.04

Arrest Warrants

§62-1-1. Complaint.
The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a justice of the peace.

§62-1-2. Warrant -- Issuance.
If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to arrest persons charged with offenses against the state. More than one warrant may issue on the same complaint.

§62-1-3. Same -- Contents.
The warrant shall be signed by the justice and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before a justice of the county in which the warrant is executed.

§62-1-4. Same -- Execution; arrest by officer without warrant in possession; duplicate warrants.
The warrant shall be executed by the arrest of the defendant. It may be executed at any time or place within the state. The officer need not have the warrant in his possession at the time of the arrest, but upon request by the defendant, the officer shall show the warrant to him as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. While the complaint is pending, a warrant returned unexecuted and not cancelled or a duplicate warrant may be delivered to the same or another authorized officer for execution.

§62-1-5. Same -- Delivery of prisoner before magistrate; complaint for person arrested without warrant; return.
(a) (1) An officer making an arrest under a warrant issued upon a complaint, or any person making an arrest without a warrant for an offense committed in his presence or as otherwise authorized by law, shall take the arrested person without unnecessary delay before a magistrate of the county where the arrest is made.

(2) If a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith in accordance with the requirements of rules of the Supreme Court of Appeals.

(3) An officer executing a warrant shall make return thereof to the magistrate before whom the defendant is brought.

(b)(1) Notwithstanding any other provision of this code to the contrary, if a person arrested without a warrant is brought before a magistrate prior to the filing of a complaint, a complaint shall be filed forthwith in accordance with the requirements of rules of the Supreme Court of Appeals, and the issuance of a warrant or a summons to appear is not required.

(2) When a person appears initially before a magistrate either in response to a summons or pursuant to an arrest with or without a warrant, the magistrate shall proceed in accordance with the requirements of the applicable provisions of the rules of the Supreme Court of Appeals.

171.05 Failure to Appear

§62-1C-17b. Failure to appear; penalties.
(a) Any person, who, having been released upon his personal recognizance pursuant to section one-a of this article or having been otherwise admitted to bail and released in accordance with this article, and who shall willfully and without just cause fail to appear as and when it may be required of him shall be guilty of the offense as hereinafter prescribed, and, upon conviction thereof, shall be punished in the manner hereinafter provided.

(b) If any such person was admitted to bail or released after being arrested for, charged or convicted of a felony and, shall thereafter be convicted for a violation of the provisions of subsection (a) of this section, such persons shall be guilty of a felony and, shall be fined not more than $5,000 or imprisoned not less than one nor more than five years, or both such fine and imprisonment.

(c) If any such person was admitted to bail or released after being arrested for, charged or convicted of a misdemeanor and, shall thereafter be convicted for a violation of the provision of subsection (a) of this section, such persons shall be guilty of a misdemeanor and, shall be fined not more the $1,000 or confined in the county jail for not more than one year, or both such fine and confinement.

(d) If any such person was admitted to bail or released pending appearance as a material witness and shall thereafter fail to appear when and where it shall have been required of him such persons shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more the $1,000 or confined in the county jail not more than one year, or both such fine and confinement.

(e) Any penalty authorized by this section shall be in addition to any forfeiture authorized or mandated by this article or by any other provision of law.

171.13

Jury Trial – I would use some of this language..

8-10-2(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 consist of twelve members.

**From Jeni Sales:**

§17B-3-3. Suspending resident's license upon conviction in another state.

The department is authorized to suspend or revoke the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be a ground for the suspension or revocation of the license of an operator or chauffeur.

§17B-3-3a. Suspending license for failure to respond or appear in court.

(a) The division shall suspend the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice from a magistrate court or municipal court of this state that such person has failed to respond or appear in court when charged with a motor vehicle violation.

(b) For the purposes of this section, §50-3-2a of this code and §8-10-2b of this code, “motor vehicle violation” is as any violation designated in chapters 17A, 17B, 17C, 17D, or 17E of this code, or the violation of any municipal ordinance relating to the operation of a motor vehicle for which the violation thereof would result in a fine or penalty: Provided, That any parking violation or other violation for which a citation may be issued to an unattended vehicle shall not be considered a motor vehicle violation for the purposes of this section, §50-3-2a of this code, or §8-10-2b of this code.

§17B-3-3c. Suspending license for failure to appear in court.

(a) The division shall suspend the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice from a circuit court, magistrate court, or municipal court of this state, pursuant to §8-10-2b or §62-4-17 of this code, that the person has failed to appear in court when charged with a criminal offense. For the purposes of this section, §8-10-2b or §62-4-17 of this code, “criminal offense” shall be defined as any violation of the provisions of this code, or the violation of any municipal ordinance, for which the violation of the offense may result in a fine, confinement in jail, or imprisonment in a correctional facility of this state: Provided, That any parking violation or other violation for which a citation may be issued to an unattended vehicle shall not be considered a criminal offense for the purposes of this section, §8-10-2b or §62-4-17 of this code.

(b) A copy of the order of suspension shall be forwarded to the person by certified mail, return receipt requested. No order of suspension becomes effective until 10 days after receipt of a copy of the order. The order of suspension shall advise the person that because of the receipt of notice of the failure to appear, a presumption exists that the person named in the order of suspension is the same person named in the notice. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. The request for hearing shall be made within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing shall be for the person requesting the hearing to present evidence that he or she is not the person named in the notice. In the event the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner’s order resulting from the hearing.

(c) A suspension under this section and §17B-3-3a of this code will continue until the person provides proof of compliance from the municipal, magistrate, or circuit court and pays the reinstatement fee as provided in §17B-3-9 of this code. The reinstatement fee is assessed upon issuance of the order of suspension regardless of the effective date of suspension.