CITY OF CHARLES TOWN

ORDINANCE COMMITTEE
AGENDA • AUGUST 23, 2023

City Council Committee Meeting **REMOTE** **4:00 PM**

101 E Washington Street, Charles Town, WV 25414

1. CALL TO ORDER

UNFINISHED BUSINESS

: **2023-723** Article 171 Follow-up Discussion
Article 171 - Working Copy.pdf

2. NEW BUSINESS

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: 08/23/23
Department: Ordinance Committee
Category: Ordinance
Initiator:

2023-723 Article 171 Follow-up Discussion

Article 171 Follow-up Discussion

ATTACHMENTS:
- Article 171 - Working Copy.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 circuit 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 confirm 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.