

CHAPTER SEVEN - Judicial
Art. 171. Municipal Court.

ARTICLE 171
Municipal Court

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CROSS REFERENCES

Establishment - see WV Code 8-10-2

General rights of appeal - see WV Code 8-34-1

Costs for crime victims' compensation fund - see WV Code 14-2A-4

Costs for funding law enforcement training academies - see WV Code 30-29-4

Commercial Correction Act – see WV Code 62-11C-4

Costs for regional jail fund – see WV Code 8-11-1A

171.01 COURT CREATED; JURISDICTION GENERALLY.

There is hereby created a court, to be known as the "Municipal Court," which shall have criminal jurisdiction over violations of City ordinances and the criminal jurisdiction of a magistrate of the State of West Virginia with respect to offenses committed within the City limits. (1978 Code Sec. 13-1)

171.02 MUNICIPAL JUDGE DESIGNATED.

There shall be a judge, to be known as the "Municipal Judge," who shall be the Mayor. (1978 Code Sec. 13-2)

171.03 POWERS AND DUTIES OF JUDGE.

(a) The Municipal Judge shall preside over the Municipal Court. He shall be a conservator of the peace within the City, and insofar as any ordinance of the City is concerned, shall have and exercise all such powers and duties in criminal cases as a magistrate may lawfully exercise under the statutes of the State, and he shall also be ex-officio a magistrate within the City, and shall, within the City, have and exercise all of the criminal powers and perform all duties fixed by law of a magistrate, except that he

shall have no jurisdiction in civil cases; and he shall have such further powers and perform such other duties as may be from time to time prescribed or conferred by any law of the State or by ordinance of the City.

(b) The Municipal Judge shall have power to issue warrants upon complaint under oath by any person or officer for the arrest of anyone charged with any offense within the jurisdiction of the court. The Municipal Judge shall hear and determine all cases over which the court has jurisdiction, and within the limits prescribed by ordinance or by general law shall have the power to punish by fine or imprisonment, or both. The Municipal Judge shall have power to summons persons or subpoena witnesses for the trial of any case before him, to compel the attendance of police officers of the City, to require the Chief of Police to enforce all judgments or orders entered by him in the exercise of his powers as Municipal Judge and to issue executions for all fines, penalties and costs imposed by him. The proceedings for the recovery of fines or for the enforcement of penalties fixed by any ordinance or law shall, so far as applicable, conform to the provisions of the general law governing civil proceedings before a magistrate of the State.

(1978 Code Sec. 13-3)

171.04 DUTIES OF POLICE DEPARTMENT.

All warrants and other process and orders of the Municipal Court shall be directed to the Chief of Police, to be executed by him or by one of his subordinates. The police officer executing any such process or order shall have the same authority and be subject to the same liability as a sheriff of the State in performance of like services.

(1978 Code Sec. 13-4)

171.05 RULES; RECORDS.

In the discharge of his duties and in the trial of cases, the Municipal Judge shall follow the rules prescribed by law for criminal proceedings before a magistrate of the State. The Municipal Judge shall keep a record of all warrants issued by him, of all persons arrested and brought before him and of all trials, fines or sentences imposed or judgments entered by him in a permanent book to be known as the Municipal Court Docket. A record of all entries made in such docket shall be signed by the Municipal Judge on the date of such entry.

(1978 Code Sec. 13-5)

171.06 TRAFFIC VIOLATIONS BUREAU.

The Municipal Judge shall keep or cause to be kept a record of every traffic complaint, or other legal form of traffic charge deposited with or presented to the Municipal Court or its Traffic Violations Bureau, if and when he shall establish such bureau, and shall keep a record of every official action by the Court or its Traffic Violations Bureau in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal, and the amount of fine or forfeiture resulting from every traffic complaint deposited with or presented to the Court or Traffic Violations Bureau.

(1978 Code Sec. 13-6)

171.07 APPEALS.

(a) Any person sentenced to imprisonment, or any individual or corporation against whom a fine of ten dollars (\$10.00) or more is assessed, shall have the right of appeal from such judgment of the Municipal Judge to the court having jurisdiction over appeals there from upon the payment of costs and the execution of an appeal bond, with security deemed sufficient by the Municipal Judge, in a penalty of an amount deemed sufficient by the Municipal Judge, and costs, conditioned that the appellant will appear before the Appellate Court on the first day of the next term thereof to answer to the offense with which he is charged and to perform and satisfy any judgment which may be entered against him by the Appellate Court on such appeal.

(b) In no case shall a fine of less than ten dollars (\$10.00) be imposed by a Municipal Judge if the defendant, his agent or attorney objects thereto. If an appeal be taken, the warrant of arrest, transcript of the judgment, the appeal bond and other papers and exhibits in the case shall be forthwith delivered by the Municipal Judge to the clerk of the Appellate Court which shall have jurisdiction to try the case in accordance with law. (1978 Code Sec. 13-7)

171.08 CONTEMPT.

(a) The Municipal Judge may punish for contempt a person guilty of any of the following acts:

- (1) Contemptuous or insolent behavior towards him while he is engaged in the trial of a case or in any other judicial proceeding.
- (2) Any breach of the peace, willful disturbance or indecent conduct in the presence of such judge while so engaged, or so near as to obstruct or interrupt his proceedings.
- (3) Violence or threats of violence to such judge or any officer, juror, witness or party going to, attending or returning from, any judicial proceeding before such judge in respect to anything done or to be done in the course of such proceeding.
- (4) Misbehavior of any officer in his official character in respect to any action or judicial proceeding had or pending before such judge or any process, judgment, order or notice therein.
- (5) Willful resistance, in the presence of the judge by an officer, juror, witness, party or other person to any lawful process or order of such judge.

(b) An order of arrest may be issued by the Municipal Judge on which any person guilty of contempt may be taken and brought before him, or such person may be taken in custody by any officer or person present, upon the oral order of the Judge, and held to answer for the contempt. An opportunity must be given him to be heard in defense or explanation of his conduct; and the Judge may thereupon discharge him, or adjudge him guilty of contempt, and punish him by fine or imprisonment, or both. The fine shall not exceed ten dollars (\$10.00) or imprisonment of five days.

- (c) The conviction for contempt, specifying the particular circumstances of the offense and judgment thereon, shall be entered by the Municipal Judge in his docket. A warrant of commitment for the term of imprisonment adjudged may be issued by the Judge, commanding an officer to take the offender to the jail of the County, and the jailer to imprison him therein for the adjudged term; and such warrant shall contain a transcript of the entry in the docket. The judgment may include, in addition to the fine, all costs in the case, including cost of arresting and keeping in prison the offender.
(1978 Code Secs. 13-8 to 13-10)

171.09 BONDS.

- (a) (1) Except as may be provided otherwise in any case by State law, the Codified Ordinances or other ordinances, whenever any person is arrested for any violation of an ordinance of the City or for any offense of which the Municipal Judge has jurisdiction, it shall be lawful for the Municipal Judge, Recorder, municipal court clerk, 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 City in such an amount, not less than twenty-five dollars (\$25.00) nor more than the maximum fine which may be adjudged against such person for the offense or offenses he is alleged to have committed plus the costs which could be assessed against him, 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, to await trial; and every such bond taken shall be filed as soon as practicable with the Municipal Court by the officer approving and taking such bond; and the Municipal Judge, Recorder, municipal court clerk, 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 when such bond is presented.
- (2) No person shall be accepted as surety upon any penal bond unless he shall acknowledge the bond before some official duly authorized by the Codified Ordinances or by State law to administer an oath, and shall make oath that he is the owner in fee of real estate situated in Harrison County and worth the amount of the bond over and above his debts and liabilities; but the officers hereinbefore named in this section are hereby authorized and empowered to accept a deposit in cash of an amount, not less than the minimum nor more than the maximum hereinbefore specified for a bond, which, in the judgment of the officer accepting the deposit, will be sufficient to cause the prisoner's appearance upon the day required of him before the Municipal Judge to await trial upon the charge against him. 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 City, and if a cash deposit has been made to secure his release, the sum so deposited shall be delivered to the Municipal Judge and by him promptly turned into the City 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 Treasurer shall forthwith take the steps necessary at law for the collection thereof.

- (b) 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. 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 subsection.
- (c) If any officer shall accept or approve any cash bond at any place or in any other manner than is provided for and authorized by this article, 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 on the charge by 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 the Municipal Judge, or the judge of a court having jurisdiction to try the prisoner for the felony alleged to have been committed by him.
- (d) No practicing attorney, officer of the Municipal Court or member of the Police Department shall be accepted as surety on any bond provided for in this section. (1978 Code Secs. 13-11 to 13-14)

171.10 COURT COSTS.

- (a) Every person within the City who is convicted of or pleads guilty to a misdemeanor before the Municipal Court shall pay the sum of ten dollars (\$20.00) which shall be deposited into the General Account of the City. (Passed 4-10-12)
- (b) (1) Regional Jail and Correctional Facility Authority Fee. In addition to the present court costs which may be lawfully imposed, an additional cost shall be imposed in an amount of not less than forty-two dollars (\$42.00) in each proceeding, except that such additional cost shall not be assessed for a traffic offense that is not a moving violation or an offense for which the ordinance does not provide a period of incarceration.
- (2) Administration Fee. Of this forty-two dollars (\$42.00) imposed as an additional cost, two dollars (\$2.00) shall be an administrative cost to be retained by the City. (Passed 7-14-87)
- (c) Crime Victim's Compensation Fund. Every person within the City who is convicted of or pleads guilty to a misdemeanor before the Municipal Court, other than a traffic offense that is not a moving violation, shall pay the sum of eight dollars (\$8.00) as costs in the case, in addition to any other court costs that the court is required by law to impose upon such

convicted person. The Court wherein such additional costs are imposed shall, on or before the tenth day of the following month, transmit all such costs received under this article to the West Virginia State Treasurer for deposit in the West Virginia State treasury to the credit of a special revenue fund to be known as the Crime Victim's Compensation Fund.

(Passed 6-23-92)

- (d) Law Enforcement Training Fund. Every person within the City who is convicted of or pleads guilty to a misdemeanor before the Municipal Court, other than a traffic offense that is not a moving violation, shall pay the sum of two dollars (\$2.00) as costs in the case, in addition to any other court costs that the court is required by law to impose upon such convicted person. The Court wherein such additional costs are imposed shall, on or before the tenth day of the following month, transmit all such costs received under this article to the West Virginia State Treasurer for deposit to the credit of a special revenue account for the funding of law-enforcement training academies and programs.
- (e) Community Corrections Act. Every person within the City who is convicted of or pleads guilty to a misdemeanor before the Municipal Court, other than a traffic offense that is not a moving violation, shall pay the sum of ten dollars (\$10.00) as costs in the case, in addition to any other court costs that the court is required by law to impose upon such convicted person. The Court wherein such additional costs are imposed shall, on or before the tenth day of the following month, transmit all such costs received under this article to the West Virginia State Treasurer to be credited to the West Virginia Community Corrections Fund.
- (f) Fines. Any citation issued through Nutter Fort Municipal Court shall have a fine imposed.
(Passed 4-22-08)
- (g) Fees for funding acquisition, Maintenance and repair of Police Equipment.
- (a) Beginning on the effective date of this section, a twenty-five dollar (\$25.00) fee per citation shall be added to the usual court costs of all criminal court proceedings involving the violation of any criminal law of the municipality, excluding violations of the Municipal parking ordinances.
- (b) All fees collected pursuant to subsection (a) here of shall be collected by the Police Court and remitted within 10 days to the City treasurer for deposit into an escrow account for funding the acquisition, maintenance and repair of police equipment and expenses of the police department.
(original passed 1/10/12)

171.11 PAYMENT OF COSTS AND FINES.

(a) Whenever a person is convicted in the Municipal Court of a violation of the Codified Ordinances 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.

(b) In determining whether a defendant is unable to pay a fine forthwith, the Court may require such defendant to file a petition, under oath, with the Court, upon a form provided by the Court, setting forth the financial condition of the defendant.

(c) Such form shall be a questionnaire, and shall include, but shall not be limited to: The name and residence of the defendant; his occupation, if any; his family status and the number of persons dependent upon him; his monthly income; whether or not his dependents are employed and, if so, their approximate monthly income; his banking accounts, if any; real estate owned by the defendant, or any interest he may have in real estate; income produced therefrom; and independent income accruing to the defendant; tangible and intangible personal property owned by the defendant, or in which he may have an interest; and a statement listing the approximate indebtedness of the defendant to other persons. Such form shall also include a payment plan of the defendant, if the Court should exercise its discretion in permitting the payment of such fine and costs in installments or other conditions to be fixed by the Court. At the end of such form there shall be printed in boldface type, in a distinctive color the following: "THIS STATEMENT IS MADE UNDER OATH. ANY FALSE STATEMENT OF A MATERIAL FACT TO ANY QUESTION CONTAINED HEREIN SHALL CONSTITUTE FALSE SWEARING AND SHALL BE AN OFFENSE AGAINST THIS SECTION. THE MAXIMUM PENALTY IS \$100 FINE OR THIRTY DAYS IN JAIL, OR BOTH." A copy of the petition shall be retained by the defendant.

(d) If the defendant is unable to read or write, the Court or the clerk may assist the defendant in completing the petition and require him to affix his mark thereto. The consequences of the making of a false statement shall be explained to such defendant.

(e) If a defendant is sentenced to pay a fine and payment of the fine or fine and costs is ordered to be made on an installment basis or in other conditions under the provisions of subsection (a) hereof, and if the defendant is also placed on probation or imposition of the execution of sentence is suspended, the Court may make payment of the fine a condition of probation or suspension of sentence.

(f) If a defendant is permitted to pay a fine or fines and costs on an installment basis, or under such other conditions as the Court shall fix under the provisions of subsection (a) hereof, the Court may require as a condition that the defendant be of peace and good behavior until the fine and costs are paid.

(g) When any person sentenced to pay a fine defaults in the payment of any such fine or of any installment thereof, the Court may issue a summons for such person to appear before the Court for a hearing on the question of whether such refusal to comply with the prior order of the Court or to a lack of a good faith effort to comply therewith. The Court may, after hearing, order that the person in default be allowed additional time for payment, may reduce or remit the amount of the fine or the unpaid portion thereof in whole or in part, or upon a finding that the default was intentional or due to the lack of a good faith effort to comply with the prior order of the Court, may order such person confined for such period up to thirty days as the Court in its discretion shall determine. (1978 Code Secs. 13-15 to 13-19)

171.12 MISCELLANEOUS FEES

(a) Service fee for copies of police accident reports.

There is hereby levied and imposed on all persons requesting copies of any Police Department accident reports the following fees:

A \$20.00 fee (NOT INCLUDING PHOTOGRAPHS); additional fees may be required.

(b) Service fee for copies of police criminal investigation reports.

There is hereby levied and imposed on all persons requesting copies of any Police Department criminal investigation reports the following fees:

(a) A \$25.00 fee for reports of four or fewer pages,

(b) An additional \$4.00 fee per page for every page above four page.

(c) Service fee for copies of police photographs.

There is hereby levied and imposed on all persons requesting copies of any Police Department photographs the following fees:

(a) A fee of \$20.00 for up to 20 photographs

(b) A fee of \$1.00 each will be required for additional photographs.

(d) Service fee for burning permits.

There is hereby levied and imposed on all persons requesting burning permits from the City of Nutter Fort the following fees:

(a) A \$5.00 fee for residential burning permits. See article 1521.02 for more details.

(e) Service fee for fingerprinting.

There is hereby levied and imposed on all persons, except children under the age of eighteen years, requesting fingerprinting by the Police Department, the following fees:

(a) A \$10.00 fee for full fingerprinting,

(b) Additional cards are 5.00 each.

THIS FEE CAN BE WAIVED FOR A BUSINESS LOCATED IN THIS CITY.

(f) Costs assessed for reproduction or copying of records.

To alleviate administrative costs and expenses, there is hereby assessed, payable by any person, firm, corporation, company or other legal entity requesting reproduction or copies of nonconfidential City records, or City records not otherwise protected by privilege or law, and further excepting the reproduction of documents identified in Article 171 herein or any document or report otherwise specifically addressed in these Codified Ordinances; and payable to the City of Nutter Fort at the City Clerk's office, a charge of twenty-five cents per page for the reproduction or copying of such records and documents maintained by the City, provided that if a person requesting copies of such records and documents provides proof of personal income which falls below the current poverty level guidelines as established from time to time by the United States Department of Health and Human Services, such person shall be entitled to copies of such records without charge. Provided that such, requests by other governmental subdivisions shall not be subject to such charge.

(original passed 1/10/2012)