

The regular meeting of the Beverly Town Council was held Monday, October 12, 2020, at 6:30 pm in council chambers of Beverly Town Hall. Members and visitors stood for the Pledge of Allegiance and were led in prayer by Mayor Burns. Mayor Andy Burns called the meeting to order in the presence of recorder Barbara Smith, members Robbie Moyer, Matt Lewis, Becky Weese and Katie Whittaker. Visitors included Robin Wilson and Kenny Weese.

With all members having received copies of the minutes, Mrs. Weese made a motion to accept the minutes as submitted. Motion seconded by Mr. Moyer with all in favor.

BUSINESS LICENSE APPROVALS – FISCAL YEAR 2020-2021

A motion was made by Mrs. Whittaker to accept a business license for WETV, Kevin/Anita Gibson. Motion seconded by Mrs. Weese with all in favor.

MUNICIPAL ORDINANCE 1ST READING

Attorney Rob Chenoweth rewrote some wording in the Municipal Court Ordinance that now requires an acceptance of the new ordinance. After discussion, a motion was made Mr. Lewis to go forward with the new reading of an ordinance of the Common Council of the Town of Beverly, West Virginia to amend Chapter 12 of the Town of Beverly Code – Municipal Court, and enact the following wording. Motion was seconded by Mr. Moyer with all in favor.

ORDINANCE ADOPTING CERTAIN STATE CODE 1ST READING

A motion was made by Mrs. Weese to go forward with An Ordinance of the Town of Beverly adopting West Virginia state code criminal offenses and traffic offenses and providing for a penalty for the Violation thereof. Motion was seconded by Mrs. Whittaker with all in favor.

POLICE VEHICLE MAINTENANCE

Mayor Burns informed council that the police vehicle has had maintenance done on it including alinement, battery, brakes checked and everything has been taken care and is good to go. Lights have been added to the top. Rob Elbon will be contacted to get pricing for the side lettering.

TOWN HALL STREET SIGN

Council was provided with a picture of what the sign pointing to town hall will look like. The clerk is now waiting on the permit from DOH to proceed.

PROPERTY TAXES DUE

When purchasing the property adjoining the sewer plant, the town was unaware of property taxes of \$380.24 in escrow for 2019. Attorney Chenoweth was in agreement that the town was responsible for the payment of the taxes. A motion was made by Mr. Lewis to pay the \$380.24 property taxes. Motion seconded by Mr. Moyer with all in favor.

HALLOWEEN CANDY FOR BVFD

A motion was made to give \$100.00 to the Beverly Fire Department to purchase candy for Halloween by Mrs. Weese. Motion was seconded by Mr. Lewis with all in favor.

CHRISTMAS TREE

A motion was made by Mrs. Weese to purchase a live tree for the town square for Christmas up to \$200.00. Motion seconded by Mrs. Lewis with all in favor.

STALNAKER FAMILY ASSOCIATION DONATION REQUEST

Council was approached by the Stalnaker Family Association for a donation and to join the association. Discussion followed and all was in agreement not to do anything at this time.

APPROVAL OF VENDOR INVOICES FOR MONTH OF OCTOBER

A motion was made by Mrs. Whittaker to pay the October invoices in the amount of \$4,136.99. Seconded by Mrs. Weese with all in favor.

UPDATES AND INFORMATION

Christmas party is scheduled for December 18, at the Beverly Fire Hall.

Superior Laundry letter – no response yet.

For the first phrase of the water project, the WV Development Office thru the State Clearing request to the US Economic Development Adm. for financial assistance in the amount of \$3,241,600 was awarded to Beverly; leaving \$810,400 to finish the project.

Questions were asked regarding who will determine how many officers to hire, selecting a municipal judge, hiring of the officer, etc. The Mayor will discuss with Rob Chenoweth who will be the deciding factors in this matter.

Safety Committee: October 20th at 10:00 a CPR and first aid class will be held. Employees are to attend. A driver's safety will also be held.

Nothing has been received by Frontier or the Discrimination Complaint.

Motion made to adjourn by Mr. Moyer and seconded by Mrs. Whittaker. Meeting adjourned at 7:30 pm.



MAYOR: ANDY BURNS



RECORDER: BARBARA SMITH

PROPOSED ORDINANCE _____

**AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF
BEVERLY, WEST VIRGINIA TO AMEND CHAPTER 12 of the TOWN OF
BEVERLY CODE – MUNICIPAL COURT, AND ENACT THE FOLLOWING.**

WHEREAS, it is the intent of the Town of Beverly, West Virginia, pursuant to its powers under W.Va. code **§8-10-1 *et seq.***, to establish and maintain a Municipal Court and Municipal Judge and to authorize said Municipal Court and Municipal Judge the authority to exercise certain judicial powers, authorities and duties within the Town of Beverly pursuant to the laws of the State, the Town Charter, and Town Ordinances

WHEREAS, it is in the best interest of the citizens of the Town of Beverly to enact the instant ordinance to amend Chapter 12 of the Town Code - Municipal Court

NOW THEREFORE, BE IT ORDAINED and ENACTED by the Common Council of the Town of Beverly that Chapter 12 of the Town Code – Municipal Court, be amended enacted and in as follows (Inserted language underlined and deleted language struck through) :

CHAPTER 12.

MUNICIPAL COURT.

Article I. In General.

- \$12-1. Created; presiding judge.
- \$12-2. Judge--Oath of office; bond.
- \$12-3. Same --Powers and duties generally.
- \$12-4. Docket; allocation of fees, fines and costs.
- \$12-5. Record of traffic cases.
- \$12-6. Procedure.
- \$12-7. Appeals.
- \$12-8. Payment of fines by electronic payments, credit cards, cash, money orders, or certified checks.
- \$12-9. Disposition of criminal costs into State Treasury account for Regional Jail and Correctional Facility Authority Fund.
- \$12-10. Additional costs in certain criminal proceedings.

Article II. Deferred Payment of Fines and Costs.

- \$12-11. When permitted.
- \$12-12. Determination of ability to pay; questionnaire.
- \$12-13. Requirements of a Payment Plan.
- \$12-14. Procedure upon default in payment.

Article I. In General.

Section 12-1. Created; presiding judge.

There is hereby created the municipal court of the Town, which shall be presided over by the municipal court judge.

The Town council shall appoint a qualified person to the office of municipal court judge, to serve in such office at the pleasure of the Town council.

Section 12-2. Judge--Oath of office; bond.

No person shall exercise any power or perform any duty as municipal court judge until he has qualified for such office by taking the oath of office and by giving such faithful performance and true accounting bond as may be required by the common council under which he shall be responsible for all Town funds coming into his hands by virtue of his office.

Section 12-3. Same--Powers and duties generally.

The municipal court judge shall have jurisdiction to hear and determine any and all alleged violations thereof and to convict and sentence persons therefor within the Town and, insofar as any ordinance, orders., by-laws, acts., resolutions, rules and regulations of the Town is concerned, shall see that the same are faithfully executed and shall have authority to hear and determine any and all alleged violations thereof and to convict and sentence persons therefor, 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 Town and shall, within the Town, have and exercise all the powers relating to crime and perform all duties fixed by law upon a magistrate; except, that he shall have no jurisdiction over civil cases. Upon complaint he shall have authority to issue a search warrant in connection with the violation of a municipal ordinance. Any search warrant, warrant of arrest or other process issued by him may be directed to the chief of police or any member of the police department or force of the municipality, and the same may be executed at any place within Randolph County, West Virginia. The municipal court judge 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 Town, including, but not limited to, the power to issue executions for all fines, penalties and

costs imposed by him, or he may require the immediate payment thereof, and in default of such payment, he may commit the party in default to the jail of the county in which such municipality is located, or other place of imprisonment within the corporate limits of such municipality, if there be one, until the fine or penalty and costs shall be paid, but the term of imprisonment in such case shall not exceed thirty days, in addition to the judicial powers, authority and duties set forth in W. Va. Code § 8-10-1 and similar or related judicial powers, authority and duties enumerated in any applicable charter provisions, as set forth in the charter or ordinance as well as the judicial powers conferred upon the mayor by the Town Charter, insofar as such Charter provisions are not in conflict with the state Constitution or any state statute which takes precedence over the Town Charter.

(For charter provisions as to judicial powers of the Municipal Judge, see Chapter. V, §4 of the Town Ordinances and By-laws, and Article 8, §§ 11, 15 of the State Constitution; and §8-10-1 of the West Virginia Code.)

Section 12-4. Docket; allocation of fees, fines and costs.

There shall be a docket of the municipal court, and it shall be the duty of the municipal court judge, or the court's clerk, to docket fully thereon all cases in the court, and to show thereon all fees, fines and costs adjudged and collected. The municipal court judge, or the court's clerk, shall, at least once a month, make a written report to the Town clerk, showing all receipts for the previous month, and shall deliver and pay over to the Town clerk all money so received and to which the Town is entitled.

Section 12-5. Record of traffic cases.

The municipal court judge, or the Court's Clerk shall keep or cause to be kept a record of every traffic complaint and other legal form of traffic charge deposited with or presented to the municipal court, and shall keep a record of every official action by the court, 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.

(For state law basis of this section, see W. Va. Code, §17C-19-8.)

Section 12-6. Procedure

As to the procedure to be used in municipal court, the municipal court judge shall use the W.Va. Rules for Magistrate Courts in so far as the same may be applicable to criminal cases, except that, in regard to jury trials, a twelve person jury shall be required as opposed to a six person jury. To the extent that the procedure contained in the W.Va. Rules for Magistrate Courts is in conflict with the provisions of Chapter. VII of the Town of Beverly's Charter, By-Laws, and Ordinances, the Magistrate Court Rules shall control. Further where the Charter, By-Laws, and Ordinances of the Town of Beverly refer to Mayor same shall be hereby changed to refer to the municipal court judge where appropriate. The same shall be true for where said Charter, By-Laws, and Ordinances refers to the Sergeant, same shall hereby be changed to refer to the chief of police or police officer as appropriate.

Section 12-7. Appeals.

(a) Every person sentenced under this chapter, to confinement or to the payment of a fine may appeal that sentence to the Randolph County Circuit Court as provided in this section.

(b) For purposes of appeal, when a jury trial is had before the municipal court, that court shall be a court of limited record. Trials before the municipal court when a jury is empaneled shall be recorded electronically. A magnetic tape or other electronic recording medium on which a trial is recorded shall be indexed and securely preserved by the court. When requested by the municipal prosecutor or by the defendant, or by any interested person, that court shall provide a duplicate copy of the tape or other electronic recording medium of each trial held. For evidentiary purposes, a duplicate of such electronic recording prepared by the court shall be a "writing" or "recording" as those terms are defined in rule 1001 of the West Virginia Rules of Evidence, and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an "original" under such rule. Unless the requesting party is a defendant proceeding as an indigent, the party shall pay to the court an amount equal to the actual cost of the tape or other medium or the sum of five dollars, whichever is greater.

(c) If the defendant in such a proceeding waives the right to trial by jury or if no jury trial is required by law, the matter shall be tried by the municipal court judge sitting without a jury. For purposes of appeal, when a nonjury trial is had before the municipal court judge that court shall not be a court of limited record and the proceedings shall not be electronically recorded.

(d) Any person convicted of an offense by the municipal court judge may appeal such conviction to the Randolph County Circuit Court as a matter of right by requesting such appeal within twenty days after the sentencing for such conviction. The municipal court judge may require the posting of bond with good security conditioned upon the appearance

the provisions of a municipal ordinance which has the same elements as an offense described in section two [§17C-5-2], article five, chapter seventeen-c of the West Virginia code or section eighteen-b [§20-7-18b], article seven, chapter twenty of the West Virginia code, there shall be imposed, in addition to other costs, fines, forfeitures or penalties as may be allowed by law, costs in the amount of fifty-five dollars. The clerk of each municipal court, or other person designated to receive fines and costs for the Town, shall, for purposes of further defraying the cost to the municipality of enforcing the provisions of the ordinance or ordinances described in this section and related provisions, deposit these moneys in the general revenue fund of the municipality. (W. Va. Code § 8-11-1b.)

Article II. Deferred Payment of Fines and Costs.

Section 12-11. When permitted.

Upon request and subject to the following requirements, the municipal court judge, clerk or other person designated to receive fines and costs for the Town or, upon a judgment rendered on appeal, shall establish a payment plan for a person owing costs, fines, forfeitures, or penalties imposed by the court for a motor vehicle violation as defined in §17B-3-3a of the West Virginia Code, a criminal offense as defined in §17B-3-3c of the West Virginia Code, or other applicable municipal ordinances, so long as the person signs and files with the clerk, an affidavit, stating that he or she is financially unable to pay the costs, fines, forfeitures, or penalties imposed:

(1) 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 5 equal monthly payments;

(2) Unless incarcerated, a person must enroll in a payment plan no later than 90 calendar days after the date the court enters the order assessing the costs, fines, forfeitures, or penalties; and

(3) If the person is incarcerated, he or she may enroll in a payment plan within 90 calendar days after release. (W. Va. Code § 8-10-2b(a).)

Section 12-12. Determination of ability to pay; questionnaire.

The West Virginia Supreme Court of Appeals has developed a uniform payment plan form and financial affidavit for requests for the establishment of a payment plan pursuant to Section 12-11. The form shall be used by the municipal court when establishing payment plans per this Article. (W. Va. Code § 8-10-2b(b).)

Section 12-13. Requirements of a Payment Plan.

(A) The payment plan shall specify: (1) The number of payments to be made; (2) The dates on which such payments are due; (3) The amount due for each payment; (4) all acceptable payment methods; and (5) the circumstances

under which the person may receive a late fee, have a judgment lien recorded against him or her, or have the debt sent to collections for nonpayment;

(B) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, or penalties owed within the court, and shall be two percent of the person's annual net income divided by 12, or \$10, whichever is greater;

(C) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan. (W. Va. Code § 8-10-2b(c)).

Section 12-14. Procedure upon default in payment.

(A)

(1) The court 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:

(a) Is not incarcerated;

(b) Has not brought the account current;

(c) Has not made alternative payment arrangements with the court; or

(d) Has not entered into a revised payment plan with the clerk before the due date.

(2) If after 90 days, a payment has not been received, the court may do one or both of the following (A) Record a judgment lien as described in subsection (C) of this section, or (B) Consign the delinquent costs, fines, forfeitures, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of the West Virginia code, an internal collection division, or both: Provided, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: Provided, however, That the collection fee may not exceed 25 percent of the delinquent payment amount. The court may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(B)

(1) If after 90 days of a judgment a person fails to enroll in a payment plan and fails to pay their costs, fines, forfeitures, or penalties, the court may assess a \$10 late fee and shall notify the person of the following:

(a) That he or she is 90 days past due in the payment of costs, fines, forfeitures, or penalties imposed pursuant to a judgment of the court;

(b) That he or she has failed to enroll in a payment plan;

(c) Whether a \$10 late fee has been assessed; and

(d) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection, a payment has not been received, the court may do one or both of the following:

(a) Record a judgment lien as described in subsection (C) of this section; or

(b) Consign the delinquent costs, fines, forfeitures, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: Provided, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: Provided, however, That the collection fee may not exceed 25 percent of the delinquent payment amount.

(C) To record a judgment lien, the court shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission of Randolph County, West Virginia, and in any county in which the defendant resides or owns property. The clerk of the Randolph County commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: Provided, That when all the costs, fines, fees, forfeitures, restitution or penalties for which an abstract of judgment has been recorded are paid in full, the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of

judgment, prepared in accordance with the provisions of §38-12-1 of the West Virginia Code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the court, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(D) A person whose driver's license was suspended prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, or penalties and a \$25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) and the payment of a \$25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

(E) If a person charged with a motor vehicle violation as defined in §17B-3-3a of the West Virginia Code or criminal offense fails to appear or otherwise respond in court, the municipal court shall notify the Division of Motor Vehicles of the failure to appear: Provided, That notwithstanding any other provision of this code to the contrary, for residents of this state, the municipal court shall wait at least 90 days from the date of the person's failure to appear or otherwise respond before notifying the Division of Motor Vehicles thereof. Upon 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. ([W. Va. Code § 8-10-2b](#)(d)-(h)).

**ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE
ARE HEREBY REPEALED AND REPLACED**

If any portion of this Ordinance shall for any reason be declared invalid by any Court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and Common Council determines that would have adopted this Ordinance without the invalid provision.

This Ordinance shall become effective July 1, 2020.

First Reading:

Motion:

Seconded:

Passed:

Second Reading:

Motion:

Seconded:

Passed:

PASSED AND APPROVED THIS ____ DAY OF _____, 2020

ATTEST:

MAYOR

CITY CLERK

ORDINANCE _____

AN ORDINANCE OF THE TOWN OF BEVERLY ADOPTING WEST VIRGINIA STATE CODE CRIMINAL OFFENSES AND TRAFFIC OFFENSES AND PROVIDING FOR A PENALTY FOR THE VIOLATION THEREOF.

WHEREAS, pursuant to the authority vested in the Town Council of the Town of Beverly, West Virginia, pursuant to West Virginia Code § 8-5-12, Council shall have plenary power to adopt and enact an ordinance or code of ordinances as it pertains to misdemeanors and make the same a part of the Code of the Town of Beverly, and imposing the same penalties therefor as exist under the state law and applicable to municipalities pursuant to W. Va. Code § 8-11-1.

NOW, THEREFORE, be it ordained and enacted by the Town Council of the Town of Beverly, West Virginia, that Chapter VIII be repealed, and in its place the following be enacted:

CHAPTER VIII, ADOPTION OF CERTAIN STATE CODES BY REFERENCE

Sec. 1 ADOPTION OF STATE CODE CRIMINAL OFFENSES AND ENFORCEMENT.

(a) There is hereby adopted by reference and made a part of this code to the same extent as if the same were copied verbatim herein all provisions of W.Va. Code Ch. 20, Art. VII, W.Va. Code Ch. 61, W. Va. Code Ch. 60A, and all provisions of W.Va. Code Ch. 17, Ch. 17A, Ch. 17B, Ch. 17C and Ch. 17D as amended or as may hereafter be amended by the legislature of the state, to the extent that the same may be legally applicable within the corporate limits of the town. In case of conflict between the provisions of the adopted portions of the West Virginia Code and the provisions of this chapter, the provisions of the former shall be binding and controlling and the provisions of this chapter shall be considered modified and amended to include the conflicting state code provisions. Any violations of the West Virginia Code provisions, which are not specifically made violations of this chapter, may be pleaded in warrants as violations of this chapter under this section.

(b) The Town of Beverly Police Department shall enforce the provisions adopted herein within the corporate limits of the Town of Beverly.

(c) Jurisdiction over the enforcement of this Ordinance shall be with the Town of Beverly's Municipal Court Judge.

Sec. 2 PENALTIES.

Any person who shall violate a provision of the West Virginia State Codes adopted herein, or fail to comply therewith, or with any of the requirements thereof, shall be guilty of a misdemeanor and fined not more than five hundred dollars (\$500.00), and/or confinement in the county or regional jail or the place of confinement in the municipality, if there is one, for a term not exceeding thirty (30) days.

Any fines, fees, or costs collected shall be remitted to the City Clerk. The City Clerk shall ensure that the fines and fees are properly paid pursuant to W. Va. Code §§ 8-11-1 *et seq.*, as well as any other applicable section of the West Virginia Code.

If any section, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reasons whatsoever, such decisions shall not affect the remaining portions of this Ordinance, which shall continue in full force and effect, and to this end the provisions of this Ordinance are hereby declared to be severable.

These revisions to the Town code are prospective and supersede and eviscerate all prior ordinances and parts of the Town code that are inconsistent with the foregoing revisions.

This Ordinance shall be deemed effective on passage.

PASSED AND APPROVED ON FIRST READING THIS ____ DAY OF _____, 2020.

PASSED, APPROVED, AND EFFECTIVE ON SECOND AND FINAL READING THIS ____ DAY OF _____, 2020.

TOWN OF BEVERLY, WEST VIRGINIA

Mayor

Attest:

City Clerk