

## Chapter 26 ELECTIONS <sup>[1]</sup>

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FOOTNOTE(S):

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**Editor's note**—The town has adopted the West Virginia Secretary of State rules and regulations regarding municipal elections.

**State Law reference**— Municipal elections, W. Va. Code, § 3-1-2a; municipal voting precincts, W. Va. Code, § 3-1-6; municipal precinct registration records, W. Va. Code, § 3-1-27; absentee voting in municipal elections, W. Va. Code, § 3-3-13; integration of municipal elections with systems of permanent registration, W. Va. Code, § 8-5-13; special municipal elections, W. Va. Code, § 8-5-15a.

### ARTICLE I. IN GENERAL

Secs. 26-1—26-20. Reserved.

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### ARTICLE II. ELECTION PREPARATIONS

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**Sec. 26-21. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Any election* or *all elections* means and includes any primary, general or special election held in the state or any of its subdivisions.

*Candidate* means any person to be voted for at an election.

*Election* means the procedure whereby the voters of the state or any subdivision thereof elect persons to fill public offices, or elect members of a constitutional convention or vote on public questions.

*Minor* means a person who has not become 18 years of age.

*Office* means public office, which shall include any elective office provided for by the town to which a salary or other compensation attaches.

*Public question* means any issue or proposition now or hereafter required by the town council for decisions at elections.

*Voter* means any person who possesses the statutory and constitutional qualifications for voting.

(Code 1981, § 5-101)

**Sec. 26-22. Persons entitled to vote.**

The registration of voters of the town shall be integrated with the system of permanent registration of voters established by W. Va. Code, § 3-2-1. No voter otherwise qualified shall be permitted to vote an unchallenged ballot at any election within the city unless he is duly registered under the provisions of state law. The registration records shall be maintained by and shall remain in the possession of the clerk of the county commission, except for use in municipal elections.

(Code 1981, § 5-102)

**Sec. 26-23. Municipal voting precinct.**

The town council, for purposes of a municipal election, shall establish the following precinct: Number 1. The location of the polling place shall be town hall.

(Code 1981, § 5-103)

**Sec. 26-24. Precincts change.**

If, by reason of destruction, the structure at which a voting place is established, or if for any other reason the election cannot be held there, unless changed by the recorder, the commissioners of election (section 26-28) of such place may hold the election at the nearest possible place which is suitable for the election.

(Code 1981, § 5-104)

**Sec. 26-25. Cards or instructions of voters.**

- (a) The town recorder shall cause to be printed in clear type instructions for the guidance of voters in marking their ballots. He shall give 12 of these to the commissioners of election when he delivers the ballots to them. The commissioners shall cause these cards to be placed within the 60-foot limit of the polls and one outside the 60-foot limit. Such cards shall contain full instructions to the voters as to what shall be done:
  - (1) To obtain ballots for voting;
  - (2) To prepare the ballots for deposit in the ballot box;
  - (3) To obtain a new ballot in place of one accidentally spoiled.
- (b) The ballot commissioners shall also cause to be printed ten or more copies of ballots on colored paper to be known as sample ballots which shall be posted along beside the cards of instruction.

(Code 1981, § 5-105)

**Sec. 26-26. Recorder to provide election supplies; requirements for poll books and ballot books.**

The town recorder, acting in accord with state law, shall perform such duties relating to all municipal elections held under the municipal authority as the clerks of the county and circuit courts of the county perform under state laws in relation to state, county and district elections in the county; and he shall likewise be the custodian of all ballots, tally sheets, and other related materials pertaining to the election.

(Code 1981, § 5-106)

**Sec. 26-27. Municipal precinct registration records.**

- (a) At least three days prior to every municipal election, it shall be the duty of the town recorder to procure from the municipal precinct file in the office of the clerk of the county commission the registration records necessary for the conduct of such election.
- (b) Such records shall, within ten days after the date of the municipal election, be returned to the office of the clerk of the county commission by the town.
- (c) In case of a contested municipal election, the registration record of any challenged voter shall be made available by the clerk of the county commission to the town council empowered to determine the contest. Such record shall be returned to the office of the clerk of the county commission within a reasonable time after the contest shall have been finally decided.
- (d) The person obtaining and returning registration records shall obtain a receipt as proof.
- (e) In the event any municipal registration record is lost, destroyed, defaced or worn in any way as to warrant replacement, it shall be the duty of the clerk of the county commission to prepare a duplicate of such record and it shall be the duty of the town to pay for such replacement.

(Code 1981, § 5-109)

**Sec. 26-28. Election commissioners and clerks—Appointment, notification and vacancies; authority to administer oaths, etc.**

- (a) The town council shall hold a regular or special session at the town hall on the first Tuesday of the month next preceding the date on which any election is to be held and appoint three commissioners and two clerks to hold the election in each precinct in the town. For every precinct in which there are 300, but not more than 400, registered voters, there may be two boards of election officers, and for all precincts in which there are more than 400 registered voters, there shall be two boards of election officers; and, where two boards are used, each board shall consist of three election commissioners and two poll clerks, one of which boards shall be designated the "receiving board" and the other the "counting board." Provided that for any special election where there are only public questions to be voted upon, there shall be but one board of election officers in each precinct, consisting of three commissioners and two poll clerks.
- (b) The town council shall, by mail, notify all commissioners and poll clerks of their appointment, and include with such notice an appropriate form for each person so appointed to return indicating whether or not he will serve as such commissioner or poll clerk. It shall be the duty of all persons so appointed to immediately return said form to the town council. In the event any of the persons so appointed refuse to serve as such commissioners or poll clerks, the town council shall make additional appointments to replace those declining to serve.
- (c) If any person appointed receiving commissioner or clerk of election shall fail to appear at the voting place at the hour for opening the polls, the remaining commissioners of election shall select another commissioner or clerk. If none of the receiving commissioners of election or poll clerks shall appear at the voting place at the hour appointed for opening the polls, the qualified voters present, being at least ten in number, shall select three commissioners and two clerks, and the persons so selected shall constitute the receiving board for the precinct. A vacancy on the counting board shall be filled in the manner herein provided for filling a vacancy on the receiving board, except that such vacancy shall be determined and filled as of the hour appointed in this chapter for the counting board to attend at the polls. Any commissioner of election acting at any election precinct is hereby empowered and authorized to administer oaths and to take and certify affidavits in relation to any matter or thing required or permitted to be done by any of the provisions of this article in conducting and holding the election.

(Code 1981, § 5-110)

**Sec. 26-29. Same—Qualifications.**

- (a) *Election officials; eligibility, suspension of eligibility.* To be eligible to be appointed or serve as an election official in any state, county or municipal election held in West Virginia, a person:
  - (1) Must be a registered voter of the county for elections held throughout the county and a registered voter of the municipality for elections held within the municipality: Provided, that if the required number of persons eligible to serve as election officials for a municipal election are not available or are not willing to serve as election officials for a municipal election, a registered voter of the county in which the municipality is located may serve as an election official for elections held within the municipality;
  - (2) Must be able to read and write the English language;
  - (3) May not be a candidate on the ballot or an official write-in candidate in the election;
  - (4) May not be the parent, child, sibling or spouse of a candidate on the ballot or an official write-in candidate in the precinct where the official serves;
  - (5) May not be a person prohibited from serving as an election official pursuant to any other federal or state statute; and
  - (6) May not have been previously convicted of a violation of any election law.

(Code 1981, § 5-111; Ord. No. 2015-01, 5-19-2015)

**Sec. 26-30. Same—Oaths; authority to administer.**

Each commissioner of election, counting board member, and poll clerk, as defined in state law, before entering upon his duties, shall take orally and subscribe to the appropriate oath, as prescribed in W. Va. Code, § 3-1-30a. Such oath may be taken before and administered by one of the election commissioners or poll clerks, who in turn may take the same before another election commissioner or poll clerk. For the purposes of this article, all election commissioners and poll clerks, having first been sworn, are authorized to administer oaths.

(Code 1981, § 5-112)

**Sec. 26-31. Days and hours of election.**

- (a) Regular municipal elections will be held in the town on the second Tuesday in June of each odd-numbered year.
- (b) Special elections will be held on the days provided by law therefor.
- (c) At every town election the polls will be opened at each precinct on the day of such election at 6:30 a.m. in the forenoon and be closed at 7:30 p.m. in the evening.

(Code 1981, § 5-113; Ord. No. 99-3, 6-4-1999)

**Sec. 26-32. Reserved.**

**Editor's note—** Amd. 2009-01 repealed § 26-32 in its entirety. Former section 26-32, pertained to compensation of election officials; expenses and derived from Code 1981, § 5-114.

**Secs. 26-33—26-52. Reserved.**

**ARTICLE III. CONDUCT OF ELECTIONS**

Sec. 26-53. Preparing election facility procedures.

Sec. 26-54. Reserved.

Sec. 26-55. Counting board.

Sec. 26-56. Closing of polls.

Sec. 26-57. Handling of destroyed, unused and absentee ballots.

Sec. 26-58. Votes tallied.

Sec. 26-59. Write-in votes.

Secs. 26-60—26-76. Reserved.

**Sec. 26-53. Preparing election facility procedures.**

The following procedures shall be followed in preparing the election facility:

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- (1) Five individuals shall be selected by the governing body and they shall constitute the receiving board. Two of the individuals shall be deemed as clerks and three individuals shall be deemed as commissioners.
- (2) The five members of the receiving board shall take the oath prescribed in section 26-30.
- (3) The commissioners shall check to make certain that the ballot boxes are empty and then shall proceed to place two locks on each ballot box, with a separate commissioner keeping the key to each of the ballot box locks.
- (4) The two clerks shall check to make certain that all election supplies are present and available, and then the ballots shall be brought out and made available to the voters.
- (5) The receiving board shall post instructions and sample ballots inside the polling place and at least 60 feet away from the polling place.
- (6) The receiving board shall raise the flag and place a sign outside indicating that a polling place is located on the premises.
- (7) If a member of the receiving board is unable to discharge his duties, the town council shall fill the vacancy by appointing another individual.

(Code 1981, § 5-201)

### **Sec. 26-54. Reserved.**

**Editor's note**— Amd. 2009-01 repealed § 26-54 in its entirety. Former section 26-54, pertained to board of clerks leaving duty and derived from Code 1981, § 5-205.

### **Sec. 26-55. Counting board.**

- (a) The counting board shall be comprised of five individuals who are selected by the governing body. Two individuals shall be designated as clerks and three individuals shall be designated as commissioners.
- (b) The five members of the counting board shall take the oath prescribed in section 26-30.
- (c) If a member of the counting board is unable to discharge his duties, the town council shall fill the vacancy by appointing another individual.
- (d) The counting board shall arrive and begin counting at 9:30 a.m., on the day of the election. They shall count the votes in only one ballot box at a time and they shall wait until there is a sufficient number of ballots within the ballot box as is necessary to protect the secrecy of the ballot. One ballot box shall always be available for the disposition of ballots.
- (e) The receiving board may also serve as the counting board. In this case, however, the board shall wait until the polls have closed before they can begin counting.

(Code 1981, § 5-207)

### **Sec. 26-56. Closing of polls.**

The polls shall close at 7:30 p.m., on the day of the election.

(Code 1981, § 5-208)

### **Sec. 26-57. Handling of destroyed, unused and absentee ballots.**

The following procedure shall be used once the polls have been closed:

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- (1) The receiving board clerks shall count the number of destroyed ballots and the number of unused ballots and record them;
- (2) The receiving board clerks shall check the absentee ballots to see if challenges should be made;
- (3) The receiving board clerks shall make up a poll slip for each absentee ballot;
- (4) The receiving board clerks shall take the number one envelope, containing the absentee ballot, from the number two ballot and shuffle them;
- (5) Both receiving board clerks shall sign each absentee ballot and shall note in the registration record that the individual has voted. They shall then put the absentee ballots in the ballot box.

(Code 1981, § 5-209)

### **Sec. 26-58. Votes tallied.**

- (a) It shall be the duty of the commissioners of the counting board to count the votes and the duty of the clerks of the counting board to record the votes on tally sheets. There shall be two tally sheets.
- (b) During the course of counting, if the intention of the voter is understood, then the counting board shall count his vote.
- (c) Once the counting of the votes is completed, certificates of results shall be sent to the town recorder and the secretary of state and one copy shall be posted at the polling place. All marked ballots shall be sent to the town council, which serves as the canvassing board.

(Code 1981, § 5-210)

### **Sec. 26-59. Write-in votes.**

If the voter decides to vote for any person whose name does not appear on the ticket, he may substitute that name by writing it in with a black (lead) pencil or other means in the proper place, and making a cross mark in the blank space at the left of the name so written.

(Code 1981, § 5-211)

### **Secs. 26-60—26-76. Reserved.**

## **ARTICLE IV. POST-ELECTION PROCEDURES**

Sec. 26-77. Return of supplies and certificates.

Sec. 26-78. Canvass of returns; recounts; preservation and subsequent destruction of ballots, records, etc.

Sec. 26-79. Disposition of certificates; procedure thereon.

Sec. 26-80. Tie vote procedure.

Sec. 26-81. Contest of elections; notices; time.

Sec. 26-82. Town council to hear election contests; procedure; review.

Sec. 26-83. Costs in election contests.

**Sec. 26-77. Return of supplies and certificates.**

Within 12 hours after completion of the counting, tabulation and declaration of the result of the election in each precinct, one of the commissioners at such precinct, designated for that purpose, shall return to the recorder the ballot boxes, registration list and the several packages of ballots, poll books, tally sheets, certificates, and all other election supplies and returns, except he shall deliver to the recorder, within the same time, packages containing one poll book, and one tally sheet, prepared and sealed which shall be kept for the town council.

(Code 1981, § 5-301)

**Sec. 26-78. Canvass of returns; recounts; preservation and subsequent destruction of ballots, records, etc.**

- (a) The town council shall be ex officio a board of canvassers, and, as such, shall keep in a well-bound book, marked election record, a complete record of all their proceedings in ascertaining and declaring the result of every election in the town. They shall convene as such canvassing board at the town hall on the 50 days (Sundays excepted) after every election held in the town, and the officers in whose custody the ballots, poll books, registration records, tally sheets and certificates have been placed shall lay the same before them for examination. They may, if deemed necessary, require the attendance of any of the commissioners, poll clerks or other persons present at the election, to appear and testify respecting the same, and make such other orders as shall seem proper, to procure correct returns and ascertain the true result of the election in the town; but in such case all the questions to the witnesses and all the answers thereto, and evidence, shall be taken down in writing and filed and preserved. All orders made shall be entered upon the record. They may adjourn from time to time, but no longer than absolutely necessary, and, when a majority of the commissioners are not present, their meeting shall stand adjourned until the next day, and so from day to day, until a quorum is present. The board shall proceed to open each sealed package of ballots so laid before them, and without unfolding them, count the number in each package and enter the same upon their record. The ballots shall then be again sealed up carefully in a new envelope, and each member of the board shall write his name across the place where such envelope is sealed. After canvassing the returns of the election, the board shall, upon the demand of any candidate voted for at such election, open and examine any one or more of the sealed packages of ballots, and recount the same; but in such case they shall seal the same again, along with the envelope above named, and the recorder of the town and each member of the board shall write his name across the place where it is sealed, and endorse in ink, on the outside: "Ballots of the election held at precinct No. \_\_\_\_\_, in the district of \_\_\_\_\_, and the county of \_\_\_\_\_, in the town of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_.
- (b) Every candidate who demands such recount shall be required to furnish bond in a reasonable amount with good sufficient surety to guarantee payment of the costs and the expenses of such recount in the event the result of the election be not changed by such recount; but the amount of such bond shall in no case exceed \$300.00. When they have made their certificates and declared the results as hereinafter provided, they shall deposit the sealed packages of ballots, absentee voter ballots, registration records, poll books, tally sheets, and precinct certificates with the recorder of the town for whom they were received, who shall carefully preserve the same for 60 days, and if there be no contest pending as to any such election, and their further preservation be not required by any order of a court, such ballots, poll books, tally sheets and certificates shall be destroyed by fire or otherwise, without opening the sealed packages of ballots; and if there is such contest pending, they shall be so destroyed as soon as the contest is ended; provided that the poll books shall be preserved until such time as the recorder of the town has completed the duties imposed upon him. If the result of the election be not changed by such recount, the costs and expenses thereof shall be paid by the party at whose instance the same was made.

(Code 1981, § 5-303)



**Sec. 26-79. Disposition of certificates; procedure thereon.**

The separate certificates of the board of canvassers shall be given to the recorder of the town who shall notify the winner of the election.

(Code 1981, § 5-304)

**Sec. 26-80. Tie vote procedure.**

When two or more persons shall receive an equal number of votes for councilperson or other town officer, such tie shall be decided by the council in being.

(Code 1981, § 5-305)

**Sec. 26-81. Contest of elections; notices; time.**

- (a) In all cases of contested elections, the town council shall be the judge of the election, qualifications and returns of their own members, and of all town officers.
- (b) A person intending to contest the election of a town office or any office that shall hereafter be created to be filled by the voters of the town shall, within ten days after the result of the election is declared, give the contestee notice in writing of such intention, and a list of the votes he will dispute, with the objections to each, and of the votes rejected for which he will contend. If the contestant objects to the legality of the election, or the qualification of the person returned as elected, the notice shall set forth the facts which such objection is founded. The person whose election is so contested shall, within ten days after receiving such notice, deliver to the contestant a like list of the votes he will dispute, with the objections to each, and of the rejected votes for which he will contend; and, if he has any objection to the qualification of the contestant, he shall specify in writing the facts on which the objection is founded. Each party shall append to his notice an affidavit that he verily believes the matters and things set forth to be true. If new facts are discovered by either party after he has given notice as aforesaid, he may, within ten days after such discovery, give an additional notice to his adversary, with the specifications and affidavit prescribed in this section.

(Code 1981, § 5-306)

**Sec. 26-82. Town council to hear election contests; procedure; review.**

The town council shall hear and decide election contests initiated pursuant to the provisions of section 26-81. Subpoenas for witnesses for either party shall be issued by the recorder of the town, and served as in other cases, and the witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties, as witnesses attending a circuit court in a civil suit. The notice of contest shall be presented to the town council at its first term after the same is delivered to the person whose election is contested, and the same shall be docketed for trial in such council. At the trial of such contest, the council shall hear all such legal and proper evidence that may be brought before it by either party, and may, if deemed necessary, require the production of the poll books, certificates and ballots deposited with its recorder, and examine the same. The hearing may be continued by the council from time to time, if it is shown that justice and right require it, but not beyond three months of the day of the election. At the final trial of such contest, the council shall declare the true result of such election, and cause the same to be entered on the records of the council. When the result of the election is declared, as aforesaid, a certified copy of the order declaring such result shall, if required, be delivered by the recorder of the town to the person declared elected, if such be the result of the trial, and such copy shall be received in all courts and places as legal evidence of the result of the election therein declared. Either the contestant or contestee shall have the right of appeal to the circuit court of the county from the final order or decision of the town council in such proceeding, upon the filing of a bond

with good personal security, by the party desiring the appeal, to be approved by the town council, in a sum deemed sufficient by such council with condition to the effect that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him by the circuit court on such appeal. But such appeal shall not be granted unless the party desiring the appeal shall make application for such appeal, and file such bond, within 30 days from the entering of the final order in such proceeding; and the circuit court may at any time require a new bond or increase the penalty thereof when the court deems it necessary. When such appeal is taken to the circuit court, as hereinbefore provided, it shall be heard and determined upon the original papers, evidence, depositions and records filed before and considered by the town council and the circuit court shall decide the contest upon the merits. From the decision of the circuit court, an appeal shall lie to the supreme court of appeals, as in other cases, but such appeal shall be heard upon the original papers and copies of all orders made, without requiring the same to be printed.

(Code 1981, § 5-307)

**Sec. 26-83. Costs in election contests.**

The cost of every contested election shall include only the expenses of serving notices, taking depositions and the allowances to witnesses; and shall be noted at the foot of every deposition or set of depositions, by the person taking the same. If the contestant fails in setting aside the election, there shall be awarded against him the amount of such costs incurred or expended by the person who was returned or declared elected. Otherwise, each party shall pay his own costs; unless it appears that the person returned or declared elected was guilty of fraud or malpractice in the election, or in procuring such return or declaration, in which case costs shall be awarded against him in favor of the contestant. Where costs are awarded in favor of either party, the amount thereof shall be ascertained under direction of the council or court which decided the case, and a certificate thereof, authenticated by the signature of the presiding officer, shall be delivered to the party in whose favor they are awarded, which certificate shall have the force of a judgment, and if such costs are not paid within ten days after the date thereof, the recorder of the town in which the party against whom the costs were awarded resides may issue execution of such certificate, upon its delivery to such recorder, in like manner as upon a judgment of the circuit court.

(Code 1981, § 5-308)