

## Chapter 6

# MUNICIPAL COURT

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### **1-6-1: Definitions**

As used in this ordinance, unless the context otherwise requires:

1. Municipal Court includes police courts and police magistrate courts created or existing under previous laws, or under a municipal charter and ordinances. (Ord. 3-1987, 5-5-1987)

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Title 1, Chapter 6 is amended by the addition of Section 26. Ord. 1-1989, 1-3-1989.

2. Municipal Judges includes police magistrates as defined and used in previous laws. (Ord. 3-1987, 5-5-1987)
3. Qualified municipal court of record means a municipal court established by, and operating in conformity with, either local charter or ordinances containing provisions requiring the keeping of a verbatim record of the proceedings and evidence at trials by either electric devices or stenographic means, and requiring as qualification for the office of judge of such court that he has been admitted to, and is currently licensed in, the practice of law in Colorado. (Ord. 3-1987, 5-5-1987)

### **1-6-2: Applicability**

This ordinance shall apply to and govern the operation of the municipal court except for the provisions relating to the method of salary payment for municipal judges, the incarceration of children provided for in Title 19, C.R.S., the right to a trial by jury for petty offenses provided for in section 16-10-109, C.R.S., rules of procedure promulgated by the supreme court, and appellate procedure. This article may be superseded by charter or ordinance. (Ord. 3-1987, 5-5-1987)

### **1-6-3: Municipal Court Created - Jurisdiction**

The Board of Trustees of the Town of Westcliffe hereby creates a municipal court to hear and try all alleged violation of ordinance provisions of the Town of Westcliffe. (Ord. 3-1987, 5-5-1987)

### **1-6-4: Municipal Judge - Appointment - Removal**

- A. 1. Unless otherwise provided in the charter of Westcliffe, the municipal court shall be presided over by a municipal judge who shall be appointed by the Board of Trustees of the Town of Westcliffe for a specified term of not less than two years' appointment under this section may be for a term of office which expires on the date of the next election of the Board of Trustees of the Town of Westcliffe. Any vacancy in the office of municipal judge shall be filled by appointment of the Board of Trustees of the Town of Westcliffe for the remainder of the unexpired term. (Ord. 3-1987, 5-5-1987)
2. The Board of Trustees of the Town of Westcliffe may appoint such additional municipal judges or assistant judges as may be necessary to act in case of temporary absence, sickness, disqualification, or other inability of the presiding municipal judge to act. (Ord. 3-1987, 5-5-1987)
3. In the event that more than one municipal judge is appointed, the Board of Trustees of the Town of Westcliffe shall designate a presiding municipal judge, who shall serve in this capacity during the term for which he was appointed. (Ord. 3-1987, 5-5-1987)

B. A municipal judge may be removed during his term of office only for cause. A judge may be removed for cause if:

1. He is found guilty of a felony or any other crime involving moral turpitude; (Ord. 3-1987, 5-5-1987)
2. He has a disability which interferes with the performance of his duties, and which is or is likely to become of a permanent character; (Ord. 3-1987, 5-5-1987)
3. He has willfully or persistently failed to perform his duties; (Ord. 3-1987, 5-5-1987)
4. He is habitually intemperate; or (Ord. 3-1987, 5-5-1987)
5. The municipality required the judge, at the time of appointment, to be a resident of the municipality, or county in which the municipality is located, and he subsequently becomes a nonresident of the municipality or the county during his term of office. (Ord. 3-1987, 5-5-1987)

**1-6-5: Qualifications of Municipal Judges**

- A. A municipal judge shall have the same qualifications as a county judge in a Class D county, as defined in section 13-6-203. (Ord. 3-1987, 5-5-1987)
- B. Preference may be given by the Board of Trustees of the Town of Westcliffe to the appointment of a municipal judge who is licensed to practice law in Colorado or who is trained in the law. (Ord. 3-1987, 5-5-1987)
- C. The Board of Trustees of the Town of Westcliffe may appoint a county judge in a Class C or D county, as defined in section 13-6-203, to serve as a municipal judge. (Ord. 3-1987, 5-5-1987)
- D. The Board of Trustees of the Town of Westcliffe may require that the municipal judge be a qualified elector of the municipality or the county in which the municipality is located. (Ord. 3-1987, 5-5-1987)

**1-6-6: Compensation for Municipal Judges**

- A. The Board of Trustees of the Town of Westcliffe shall provide by ordinance for the salary of the municipal judge. Such salary shall be a fixed annual compensation and payable on a monthly or other periodic basis. (Ord. 3-1987, 5-5-1987)
- B. Payment of any fees or other compensation based directly on the number of individual cases handled or heard by the municipal judge is prohibited. (Ord. 3-1987, 5-5-1987)

**1-6-7: Clerk of the Municipal Court<sup>2</sup>**

- A. The Board of Trustees of the Town of Westcliffe shall establish the position of clerk of the municipal court, except that the municipal judge shall serve as *ex officio* clerk if the business of the court is insufficient to warrant a separate full-time or part-time clerk. (Ord. 12-1984, 13-1984 & 14-1984 8-6-1984; Ord. 3-1987, 5-5-1987)
- B. The clerk of the municipal court shall be appointed by the presiding municipal judge and shall have such duties as are delegated to him by law, court rule, or the presiding municipal judge. (Ord. 3-1987, 5-5-1987)
- C. The Board of Trustees of the Town of Westcliffe shall provide for the salary of the clerk of the municipal court in the same manner as specified in section 3-1-6 except that if the municipal judge serves as *ex officio* clerk, he shall not receive any additional compensation. (Ord. 3-1987, 5-5-1987)

**1-6-8: Bond**

- A. The clerk of the municipal court shall give a performance bond in the sum of two thousand dollars, or in such amount as may be set by ordinance, to the Town for which he is appointed. (Ord. 3-1987, 5-5-1987)
- B. The performance bond shall be approved by the Board of Trustees of the Town of Westcliffe and be conditioned upon the faithful performance of his duties, and for the faithful accounting for, and payment of, all funds deposited with or received by the court. (Ord. 3-1987, 5-5-1987)
- C. When the municipal judge serves as clerk of the municipal as provided in section 3-1-7, he shall execute the performance bond required by this section. (Ord. 3-1987, 5-5-1987)

**1-6-9: Court Facilities and Supplies**

- A. The Board of Trustees of the Town of Westcliffe shall furnish the municipal court with suitable courtroom facilities and sufficient funds for the acquisition of all necessary books, supplies, and furniture for the proper conduct of the business of the court. (Ord. 3-1987, 5-5-1987)
- B. In order to carry out the provisions of subsection (A) of this section, the Westcliffe Town Board may locate court facilities outside of the municipality or county in which the municipality is located, if such facilities are in reasonable proximity to the municipality and the governing body determines that suitable facilities cannot be provided within the municipality. (Ord. 3-1987, 5-5-1987)

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Title 1, Chapter 6, Section 7 concerning the Clerk of the Municipal Court has been redefined in this Ordinance 3-1987. This will delete Ordinance 13-1984, 14-1984 & 15-1984, 8-6-1984)

- C. Any two or more governments may cooperate or contract, pursuant to part 2 of article 1 of title 29, C.R.S., to provide joint court facilities and supplies. Such joint facilities may be located outside of any or all of the cooperating or contracting governments but shall be located within reasonable proximity to each of the cooperating or contracting governments. (Ord. 3-1987, 5-5-1987)
- D. Where, pursuant to this section, a municipality locates its court facilities outside of its boundaries, any reference in this article to the municipality in which the court is located shall mean the municipality creating the municipal court, and any reference in this article to the county in which the municipal court is located shall mean the county in which the municipality creating the court is located. (Ord. 3-1987, 5-5-1987)

**1-6-10: Commencement of Actions - Process**

- A. Any action or summons brought in municipal court to recover any fine or enforce any penalty of forfeiture under any ordinance shall be filed in the corporate name of the Town of Westcliffe in which the court is located by and on behalf of the people of the state of Colorado. (Ord. 3-1987, 5-5-1987)
- B. Any process issued from the municipal court runs in the corporate name of the Town of Westcliffe and on behalf of the people of the state of Colorado. Processes from the municipal court shall be executed by any authorized law enforcement officer from the Town of Westcliffe in which the court is located. (Ord. 3-1987, 5-5-1987)
- C. Any authorized law enforcement officer may execute within his jurisdiction any summons, process, writ, or warrant issued by a municipal court from another jurisdiction arising under the ordinances of such municipality for an offense which is criminal or quasi-criminal. For the purposes of this subsection (C), traffic offenses shall not be considered criminal or quasi-criminal offenses unless penalty points may be assessed under section 42-2-123 (5) (a) to (5) (dd), C.R.S. The issuing municipality shall be liable for and pay all cost, including costs of service or incarceration incurred in connection with such service or execution. (Ord. 3-1987, 5-5-1987)
- D. The clerk of the municipal court shall issue a subpoena for the appearance of any witness in municipal court upon the request of either the prosecuting municipality or the defendant. The subpoena may be served upon any person within the jurisdiction of the court in the manner prescribed by the rules of procedure applicable to municipal courts. Any person subpoenaed to appear as a witness in municipal court shall be paid a witness fee in the amount of five dollars. (Ord. 3-1987, 5-5-1987)
- E. Upon the request of the municipal court, the prosecuting municipality, or the defendant, the clerk of the municipal court shall issue a subpoena for the appearance, at any and all stages of the court's proceedings, of the parent, guardian, or lawful custodian of any child under eighteen years of age who is charged with a municipal offense. (Ord. 3-1987, 5-5-1987)

**1-6-11: Powers and Procedures**

The municipal judge of the municipal court has all judicial powers relating to the operation of his court, subject to any rules of procedure governing the operation and conduct of municipal courts promulgated by the Colorado Supreme Court. The presiding municipal judge of the municipal court has authority to issue local rules of procedure consistent with any rules of procedure adopted by the Colorado Supreme Court. (Ord. 3-1987, 5-5-1987)

**1-6-12: Fines and Penalties**

- A. Any person convicted of violating a municipal ordinance may be incarcerated for a period not to exceed ninety days or fined an amount not to exceed three hundred dollars, or both. (Ord. 3-1987, 5-5-1987)
- B. In sentencing or fining a violator, the municipal judge shall not exceed the sentence or fine limitations established by ordinance. The municipal judge may suspend the sentence or fine of any violator and place him on probation for a period not to exceed ninety days. (Ord. 3-1987, 5-5-1987)
- C.<sup>3</sup> The municipal judge is empowered in his discretion to assess costs against any defendant who, after trial, is found guilty of an ordinance violation. Such costs shall not exceed twenty five dollars (\$25.00) for trial to the court or trial by jury. (Ord. 3-1987, 5-5-1987, Ord. 3-2010, 12-2-10)
- D. Notwithstanding any provision of law to the contrary, the municipal court has the authority to order a child under eighteen years of age confined in a juvenile detention facility operated or contracted by the department of institutions for failure to comply with a lawful order of the court, including an order to pay a fine. If a juvenile facility is not available, the child may be confined in an adult facility so long as he is separated from adult offenders, as required by section 19-2-508 (4) C.R.S. Any confinement of a child for contempt of municipal court shall not exceed forty-eight hours. (Ord. 3-1987, 5-5-1987)
- E. Notwithstanding any other provision of law, a child, as defined in section 19-1-103 (3), C.R.S. arrested for an alleged violation of a municipal ordinance, convicted of violating a municipal ordinance or probation conditions imposed by a municipal court, or found in contempt of court in connection with a violation or alleged violation of a municipal ordinance shall not be confined in a jail, lockup, or other place used for the confinement of adult offenders if the municipal court is located in a county in which there is a juvenile detention facility operated by or under contract with the department of institutions which shall receive and provide care for such child, or if the jail is located within forty miles of such a facility. The municipal court imposing penalties for violation of probation conditions issued by such court, or for contempt of court in

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3 Title 1, Chapter 6, Section 12 is amended by repealing and reenacting Subsection C in its entirety. (Ord. 3 – 2010, eff. 12-2-2010)

connection with a violation or alleged violation of a juvenile detention facility operated by or under contract with the department of institutions. If a juvenile detention facility operated by or under contract with the department of institutions is not located within the county or within forty miles of the jail, a child may be confined for up to forty-eight hours in a jail, pursuant to sections 19-2-508 (4), C.R.S. (Ord. 3-1987, 5-5-1987)

**1-6-13: Trial by Jury**

- A. In any action before municipal court in which the defendant is entitled to a jury trial by the constitution or the general laws of the state, such party shall have a jury upon request. The jury shall consist of three jurors unless, in the case of a trial for a petty offense, a greater number, not to exceed six, is requested by the defendant. (Ord. 3-1987, 5-5-1987)
- B. In the Town of Westcliffe, juries may be summoned by the issuance of *venire* to a police officer or marshal. (Ord. 3-1987, 5-5-1987)
- C. Jurors shall be paid the sum of six dollars per day for actual jury service, and three dollars for each day of service on the jury panel alone. (Ord. 3-1987, 5-5-1987)
- D. For the purposes of this section, a defendant waives his right to a jury trial under subsection (A) of this section unless, within ten days after arraignment or entry of a plea, he files with the court a written jury demand and at the same time tenders to the court a jury fee of twenty-five dollars, unless the fee is waived by the judge because of the indigence of the defendant. If the action is dismissed or the defendant is acquitted of the charge, or if the defendant having paid the jury fee files with the court at least ten days before the scheduled trial date a written waiver of jury trial, the jury fee shall be refunded. (Ord. 3-1987, 5-5-1987)
- E. At the time of arraignment for any petty offense in this state, the judge shall advise any defendant not represented by counsel of the defendant's right to trial by jury; of the requirement that the defendant, if he desires to invoke his right to trial by jury, demand such trial by jury in writing within ten days after arraignment or entry of a plea; of the number of jurors allowed by law; and of the requirement that the defendant, if he desires to invoke his right to trial by jury, tender to the court within ten days after arraignment or entry of a plea a jury fee of twenty-five dollars unless the fee is waived by the judge because of the indigence of the defendant. (Ord. 3-1987, 5-5-1987)

**1-6-14: Fines and Costs**

- A. All fines and costs collected or received by the municipal court shall be reported and paid monthly, or at such other intervals as may be provided by ordinance, to the treasurer of the Town of Westcliffe and deposited in the fund of the Town of Westcliffe. (Ord. 3-1987, 5-5-1987)

**1-6-15: Appeals**

- A. Appeals may be taken by any defendant from any judgment of the municipal court which is not a qualified municipal court of record to the county court of the county in which such municipal court is located, and the cause shall be tried *de novo* in the appellate court. (Ord. 3-1987, 5-5-1987)
- B. Appeals taken from judgment of a qualified municipal court of record shall be made to the district court of the county in which the qualified municipal court of record is located. The practice and procedure in such case shall be the same as provided by section 13-6-310, C.R.S. and applicable rules of procedure for the appeal of misdemeanor convictions from the county court to the district court, and the appeal procedures set forth in this article shall not apply to such case. (Ord. 3-1987, 5-5-1987)
- C. No municipality shall have any right to appeal from any judgment of a municipal court, not of record, concerning a violation of any charter provision or ordinance, but this subsection (C) shall not be construed to prevent a municipality from maintaining any action to construe, interpret, or determine the validity of any ordinance or charter provision involved in such proceeding. Nothing in this subsection (C) shall be construed to prevent a municipality from appealing any question of law arising from a proceeding in a qualified municipal court of record. (Ord. 3-1987, 5-5-1987)
- D. If, in the municipal court, a defendant is denied a jury trial to which he is entitled under section 13-10-114, he is entitled to a trial by jury under section 16-10-109, C.R.S., and to a trial *de novo* upon application therefore on appeal. (Ord. 3-1987, 5-5-1987)
- E. Notwithstanding any provision of law to the contrary, if confinement of a child is ordered pursuant to a contempt conviction as set forth in section 13-10-113 (4), appeal shall be to the juvenile court for the county in which the municipal court is located. Such appeals shall be advanced on the juvenile court's docket to the earliest possible date. Procedures applicable to such appeals shall be in the same manner as provided in subsections (A) and (B) of this section for appeals to the county court. (Ord. 3-1987, 5-5-1987)

**1-6-16: Time - Docket Fee - Bond**

- A. Appeals may be taken within ten days after entry of any judgment of the municipal court. No appeal shall be allowed until the appellant has paid to the clerk of the municipal court one dollar and fifty cents as a fee for preparing the transcript of record on appeal. If the municipal court is a court of record, the clerk of the municipal court is entitled to the same additional fees for preparing the record, or portions thereof designated, as is the clerk of the county court on the appeal of misdemeanors, but said fees shall be refunded to the defendant if the judgment is set aside on appeal. No stay of execution shall be granted until the appellant has executed an approved bond as provided in sections 13-10-120 and 13-10-121. (Ord. 3-1987, 5-5-1987)

**1-6-17: Notice - Scope**

- A. Appeals may be taken by filing with the clerk of the municipal court a notice of appeal, in duplicate. The notice of appeal shall set forth the title of the case; the name and address of the appellant and appellant's attorney, if any; identification of the offense or violation of which the appellant was convicted; a statement of the judgment, including its date and any fines or sentences imposed; and a statement that the appellant appeals from the judgment. The notice of appeal shall be signed by the appellant or his attorney. (Ord. 3-1987, 5-5-1987)
- B. The taking of an appeal shall not permit the retrial of any matter of which the appellant has been acquitted, or any conjoined charge from the conviction of which he does not seek to appeal. (Ord. 3-1987, 5-5-1987)

**1-6-18: Certification to Appellate Court**

- A. Upon payment of the fee provided in section 13-10-117, and filing of notice as provided in section 13-10-118, the original papers in the municipal court file, together with a transcript of the record of the municipal court, and a duplicate notice of appeal shall be certified to the appropriate appellate court pursuant to section 13-10-116 by the municipal court. (Ord. 3-1987, 5-5-1987)

**1-6-19: Bond - Approval of Sureties - Forfeitures**

- A. When an appellant desires to stay the judgment of the municipal court, he shall execute a bond to the municipality in which the municipal court is located, in such penal sum as may be fixed by the municipal court, and in such form and with sureties qualified as the municipality may, by ordinance, designate. (Ord. 3-1987, 5-5-1987)
- B. Sureties shall be approved by a judge of the municipal court from which the appeal is taken. (Ord. 3-1987, 5-5-1987)
- C. The amount of bond shall not exceed double the amount of the judgment for fines and costs, plus an amount commensurate with any jail sentence, which latter amount shall be not less than fifty dollars nor more than a sum equal to two dollars for each day of jail sentence imposed. (Ord. 3-1987, 5-5-1987)

**1-6-20: Conditions of Bond - Forfeiture - Release**

- A. The bond shall be conditioned that the appellant will duly prosecute such appeal and satisfy any judgment that may be rendered upon trial of the case in the appropriate appellate court to which appeal is taken pursuant to section 13-10-116 and that the appellant will surrender himself in satisfaction of such judgment if that is required. (Ord. 3-1987, 5-5-1987)
- B. If the bond is forfeited, the appellate upon motion of the municipality, shall enter judgment against the appellant, and sureties on the bond for the amount of such bond. The

appellate court, with consent of the municipality, shall enter judgment against the appellant and sureties on the bond for the amount of such bond. The appellate court, with the consent of the municipality, may set aside or modify the judgment. (Ord. 3-1987, 5-5-1987)

C. Any municipality may provide by ordinance such other bond terms and conditions as are not inconsistent with the provisions of this article. The filing of such bond or any notice thereof of record shall not constitute any lien against any property of the sureties. (Ord. 3-1987, 5-5-1987)

D. When the condition of the bond has been satisfied or the forfeiture thereof set aside or remitted, the municipal court shall exonerate the obligors and release the bond. At any time before final judgment in the appellate court, a surety may be exonerated by a deposit of cash in the amount of the bond or by timely surrender of the appellant into custody. (Ord. 3-1987, 5-5-1987)

**1-6-21: Docket Fee - Dismissal**

A. The appellant shall pay a docket fee as provided by law to the clerk of the appellate court, within ten days from the date he ordered the transcript of record. If he does not do so, his appeal may be dismissed on motion of the municipality. (Ord. 3-1987, 5-5-1987)

**1-6-22: *Procedendo* on Dismissal**

A. Upon dismissal of an appeal, the clerk of the appellate court shall at once issue a *procedendo* to the municipal court from the judgment on which appeal was taken, to the amount of the judgment and all costs incurred before the municipal court. (Ord. 3-1987, 5-5-1987)

**1-6-23: Action on Bond in Name of Municipality**

A. Action may be instituted upon any bond under this ordinance in the name of the Town of Westcliffe whose favor it is executed. (Ord. 3-1987, 5-5-1987)

**1-6-24: Judgment**

A. Upon trial *de novo* of the case on appeal to the appellate court, if a jury has been demanded, the duties of the jurors shall be to determine only whether the appellant has violated the ordinance charged. Upon a verdict of guilty, the judge shall then hear and consider any material facts in mitigation or aggravation of the offense and shall impose penalty as provided by ordinance. (Ord. 3-1987, 5-5-1987)

**1-6-25: Rules of Procedure**

A. The Westcliffe Municipal Court shall be governed by the Municipal Court Rules of Procedure

promulgated by the Colorado Supreme Court in, accordance with Volume 7B, Court Rules, Chapter 30, C.R.S. 1973. (Ord. 3-1987, 5-5-1987)

**1-6-26: Verbatim Record**

- A. All proceedings in the Municipal Court for the Town of Westcliffe shall be recorded by an electromagnetic tape recording device or by stenographer. (Ord. 1-1989, 1-3-1989)
- B. The Clerk of the Municipal Court shall keep the record of the proceedings and evidence offered at trial for a period of 60 days from the date of conviction or acquittal. (Ord. 1-1989, 1-3-1989)
- C. In the event that a device for keeping a verbatim record of the proceedings and evidence at trials is unavailable, or the judge presiding over the trial is not admitted to and currently licensed in the practice of law in Colorado, the court may, in its discretion, proceed to hear the matter before it as a court which is not a qualified municipal court of record. (Ord. 1-1989, 1-3-1989)