



CITY OF ELKINS

MUNICIPAL HOME RULE PILOT PROGRAM (PHASE III) APPLICATION
NOVEMBER 2015



CITY OF ELKINS

Van T. Broughton
Mayor

401 Davis Avenue
Elkins, West Virginia 26241

November 9, 2015

Deliver Via Hand Delivery

Ms. Debbie Browning
West Virginia Development Office
West Virginia Home Rule Pilot Program
State Capitol Complex, Building 6, Room 553
Charleston, WV 25305-0311

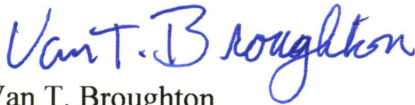
Re: Application of the City of Elkins to the Municipal Home Rule Pilot Program

Ms. Browning:

Please find enclosed an original and seven copies of the Application of the City of Elkins under the Municipal Home Rule Pilot Program, as executed.

Please call me if you have any questions regarding the enclosed application. Thank you for your assistance.

Sincerely,



Van T. Broughton

Mayor

Municipal Home Rule Pilot Program Phase III

APPLICATION CHECKLIST

SECTION I: APPLICANT INFORMATION	
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p. 3	General Information
p. 3	Municipal Classification
p. 3	Specific Issue(s) to be Addressed
p. 3	Issue(s) Category: Tax/Organization/Administrative/Personnel/Other

SECTION II: NARRATIVE	
Page No.	
pp. 4-20	Specific state laws, policies, acts, resolutions, rules or regulations that are preventing the municipality to carry out duties in the most cost effective, efficient, and timely manner.
pp. 4-20	Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.
pp. 4-20	Proposed solution(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include: 1) Proposed solution(s) in one of the five areas (tax/administrative/organization/personnel/other) 2) If revenue related, estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.

SECTION III: AFFIDAVITS	
Page No.	
A1	Hearing Mandate Verification
A2	Publication Mandate Verification
A3	Ordinance Authorizing Submission of Plan
N/A	Fiscal Impact Worksheets/Formulas (if revenue related)
A4	Attorney Opinion (application complies with statutory requirements)
A5	State of West Virginia Fees Statement (none outstanding)
A6	Agreement to Requirements Statement

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Section I: Applicant Information

The below subsections provide information about the applicant, the City of Elkins, W. VA.

I.A. General Information

Municipality: City of Elkins
Certifying official: Mayor Van T. Broughton
Contact Person: City Clerk Sutton R. Stokes
Address: 401 Davis Avenue, Elkins, WV 26241
Telephone: (304) 636-1414, ext. 1211
Email: sstokes@cityofelkinswv.com
2010 census: 7,094

I.B. Municipal Classification

Class I Class II **Class III X** Class IV

I.C. Specific Issues to Be Addressed

Our home rule application and plan is designed to address the following issues:

- The inability of our code enforcement officer, building officer, and/or city police to cite property owners “on the spot” for violations of city ordinances concerning property maintenance, safety, and health hazards.
- The inability to require lenders and trustees to register and maintain foreclosed properties.
- The inability to place public-nuisance liens (for unpaid nuisance abatement charges) against a property without a court order.
- The inability to require that someone buying a property at tax-sale auction must satisfy the city’s demolition lien before securing title to the property.
- The difficulty of cost-effectively purchasing tax delinquent properties.
- The inability to sell or lease at below-market rates public property to private or non-profit organizations for projects that promote economic development and/or the public good.
- The inability to employ part-time, non-civil-service police officers for longer than three months.
- The inability to hire police officers who are older than 40 years.
- The difficulty of locating sufficient election officials and civil service/building commissioners under the current requirement that political party membership be taken into account.
- The inability to reduce the number of business-license categories and/or reduce the fees charged to various categories.
- The economic development obstacle of the current distance requirements between churches and restaurants/bars.

I.D. Category of Issues to be Addressed

Tax **Organization X** **Administration X** **Personnel X**

Section II: Narrative

The City of Elkins is the seat of Randolph County, the largest county in the state. Boasting many anchor institutions (Davis and Elkins College, a federal court and office building, the headquarters of the Monongahela National Forest, Davis Memorial Health Center, and others), the city has managed to maintain a small-town atmosphere even as it faces many issues more typical of much larger cities. In crafting its home-rule application, the city has sought to identify authorities that will help it better respond to these issues without imposing additional taxes.

The bulk of the home-rule authorities sought by the City of Elkins are related to the problem of dilapidated properties. The remaining authorities are miscellaneous. In the sections that follow, each authority is discussed, with reference to:

- Specific state laws that preventing the City of Elkins from carrying out its duties in the most cost-effective, efficient, and timely manner.
- Specific problems created by those laws.
- Proposed solutions to the perceived problems, including all proposed changes to law, policies, acts, resolutions, rules, or regulations

II.A. Authorities for Addressing Dilapidated Properties

Like many other West Virginia cities and towns, the City of Elkins suffers the ill effects of an excessive number of dilapidated and decrepit properties. Although there are many reasons why these properties have reached their current condition, each affects the city negatively by reducing neighboring property values, undermining community morale, discouraging new residents and businesses, attracting criminal activity, posing fire and other safety risks (especially for children and first responders), and creating health risks through the presence of mold and vermin.

Although state code currently gives cities certain powers intended to address such problems, these were clearly devised in a time when the prevalence of such properties was much lower than today and the need to intervene was occasional rather than constant. The processes and tools currently available under state code are simply too inefficient and unwieldy and generally place the city at a disadvantage in efforts to take effective action against unhealthy, dangerous properties.

Therefore, in order to better discharge our duty to protect the health, safety, and economic interests of our residents, businesses and property owners, we seek the following authorities:

- The authority for our code enforcement officer, building officer, and/or city police to cite property owners “on the spot” for violations of city ordinances concerning property maintenance, safety, and health hazards.
- The authority to require lenders and trustees to register and maintain foreclosed properties.
- The authority to place public-nuisance liens (for unpaid nuisance abatement charges) against a property without a court order.
- The authority to require that someone buying a property at tax-sale auction must satisfy the city’s demolition lien before securing title to the property.

- The authority to exercise a right of first refusal to purchase any delinquent-tax property inside city limits for taxes owed before the property is listed for sheriff's auction.
- The authority to sell without auction or lease city property at fair-market value to private purchasers in a manner that promotes economic development and/or the public good.
- The authority to sell without auction or lease city property at below-market value to 501(c)3 corporations.

These authorities and the justifications therefor are discussed in more detail in the following subsections.

II.A.1. “On the spot” citations

This subsection explains why the City of Elkins seeks the authority for its code enforcement officer, building officer, and/or city police to cite property owners “on the spot” for violations of city ordinances concerning property maintenance, safety, and health hazards.

II.A.1.a. Specific Legal Barrier

W. Va. Code §8-12-16 allows municipalities to adopt ordinances regulating the repair, closing, demolition, etc. of dwellings or buildings unfit for human habitation. Additionally, municipalities may adopt ordinances requiring the owner of any such dwelling or building to pay for the costs of repairs, alterations, improvements, demolition, etc.

W.Va. Code § 8-12-5(23) further vests municipalities with the authority to, by ordinance or resolution, provide for the elimination of hazards to public health and safety and abate or cause to be abated anything which a majority of the governing body finds to be a public nuisance, but does not provide authority for granting citation powers to code enforcement officials.

In fact, from W. Va. Code §8-12-16, in pertinent part, the following language restricts enforcement agents to the powers granted to civil process servers:

“(i) All orders issued by the enforcement agency shall be served in accordance with the law of this state concerning the service of process in civil actions, and, be posted in a conspicuous place on the premises affected by the complaint or order: Provided, That no ordinance may be adopted without providing for the right to apply to the circuit court for a temporary injunction restraining the enforcement agency pending final disposition of the cause.”

II.A.1.b. Specific Problem Caused by Legal Barrier

The result of the above code language is that, before citing property owners for property-maintenance and related nuisance violations (e.g., sanitation issues, garbage buildup, graffiti, unmaintained lawns, unsafe or broken sidewalks), building and zoning inspectors must follow an onerous of first posting public notice 10 days prior (warnings) and then applying for and receiving approval from the city’s municipal court before a citation is issued. This process is inefficient, costly, and leads to an extended delay between the identification of a public nuisance and compliance from the property owner. In fact, because this process is so time-consuming and injurious to the apparent authority of the city’s enforcement agents, non-compliance by the property owner is the more likely outcome.

II.A.1.c. Proposed Solution

Elkins seeks authority to enact an ordinance providing its code enforcement officers the authority to issue "on the spot" citations for certain violations. This citation power will extend to sanitation, drainage, sidewalks in disrepair, high weeds, grass, or both, graffiti, exterior garbage accumulation, open storage in residential districts, and vehicles without proper registration.

These citations may be issued to the owner, lessee, sub-lessee, tenant, occupant, or agent or manager thereof, presently having control over the property in question, and an opportunity to respond will be afforded to the cited party by contesting the citation in municipal court. The citation will be administered substantially similarly to how traffic citations are administered.

II.A.2. Registration and Maintenance of Foreclosed Properties

This subsection explains why the City of Elkins seeks the authority to require lenders and trustees to register and maintain foreclosed properties.

II.A.2.a. Specific Legal Barrier

W. Va. Code §8-12-16c grants municipalities the power to “establish by ordinance a vacant building and property registration and maintenance program.”

II.A.2.b. Specific Problem Caused by Legal Barrier

Although W. Va. Code §8-12-16c clarifies that banks, lenders and trustees can be considered "owners" who are required to register vacant properties and be subject to vacant property enforcement after code violations emerge, there are continuing problems in cities like Elkins with some irresponsible parties that foreclose on properties but fail to maintain them.

One problem is that some lenders and trustees fail to enter their ownership on the title of a foreclosed property until just prior to resale, fail to maintain the properties during the period of foreclosure and vacancy, and seek to avoid the payment of fees for action taken by the municipality to correct code violations.

In these situations, foreclosed and vacant houses deteriorate and cause damage to neighborhoods, yet code enforcement officials can have a difficult time contacting the mortgage trustee, let alone compelling them to maintain these properties. In effect, the lender or trustee can ignore property maintenance for long periods of time and then simply extinguish city maintenance fees when they eventually enter ownership on the property title just prior to resale.

II.A.2.c. Proposed Solution

Elkins seeks authority to enact an ordinance, expanding current powers granted by W. Va. Code §8-12-16c, that would require lenders and trustees who are in the process of foreclosing on a residence to register as an owner of the property at the time that the foreclosure is initiated (e.g., such as the time that the lender sends a foreclosure letter to the homeowner, or the time that the lender registers as an alternate trustee on the property), for the purposes of code enforcement and property maintenance.

At the time that the lender or trustee registers as an owner, the proposed ordinance would require it to retain a party to conduct property maintenance, provide the contact information for that maintenance company to the city, and be responsible for ensuring that this property maintenance company keeps the property up to code and maintained.

II.A.3. Public Nuisance Liens

This subsection explains why the City of Elkins seeks the authority to place public-nuisance liens (for unpaid nuisance abatement charges) against a property without a court order.

II.A.3.a Specific Legal Barrier

Although, as discussed in subsection II.A.1.a, above, W.Va. Code § 8-12-16 permits the adoption of ordinances regulating the repair, closing, demolition, etc., of dwellings or buildings unfit for human habitation and allows municipalities to file liens against real property for an amount that reflects all costs incurred by the municipality for repairing, altering, improving, closing, demolishing, etc., such liens cannot be filed in the absence of a court order.

II.A.3.b. Specific Problem Caused by Legal Barrier

The City has the ability to repair, alter, or demolish property and/or mow overgrown grass, but is limited to sending a bill to the property owner to attempt to recoup the city's costs in taking such action. These bills are often left unpaid, sinking the city's costs and reducing the perceived authority of the city's enforcement agents.

II.A.3.c. Proposed Solution

Elkins seeks authority to enact an ordinance that would enable it to not only, after due notice, repair, alter, or demolish property, mow overgrown grass, collect unlawful accumulations of garbage and rubbish, and take other similar actions, but also, without court approval, place a lien on the property for the city's costs in taking such action.

II.A.4. Satisfaction of Demolition Liens

This subsection explains why the City of Elkins seeks the authority to require anyone buying a property at a tax-sale auction to satisfy our demolition lien before securing title to the property.

II.A.4.a Specific Legal Barrier

W.Va. Code §11A-3-14(a) provides that “if the highest bidder present at the auction of a piece of real property for delinquent taxes bids and pays at least the amount of taxes, interest and charges for which the tax lien on any real estate is offered for sale, the sheriff shall issue to him or her a certificate of sale for the purchase money...except the sheriff shall require payment of any subsequent taxes due at the time of the sale before a Certificate of Sale is issued.”

The Sheriff is required to issue a Certificate of Sale to the highest bidder who pays at least the amount of taxes, interest and charges for which the tax lien on the real estate is offered for sale. Left unaddressed is the satisfaction of any demolition liens that may have been imposed by a municipality; state code does not require the successful bidder to satisfy any such liens, which are effectively washed away as a result.

II.A.4.b. Specific Problem Caused by Legal Barrier

As per the International Property Maintenance Code (IPMC), §110, a city may order the demolition of any structure (after proper notification and rigorous attention to the due process rights of the owner) that has become “so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy such that it is unreasonable to repair the structure, to demolish and removed such structure ... or where there has been a cessation of normal construction of any structure for a period of more than two years.”

IPMC §110.3 further provides that if the owner of the premises fails to comply with a demolition order within the time prescribed, the Code Official shall cause the structure to be demolished and removed, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

All too often, however, these demolished properties end up at the county tax sale because the homeowners are delinquent on their property taxes. These properties, had they not been improved by the demolition conducted by the city, might be more likely to go unredeemed or not purchased at the county tax sale. However, due in large part to the demolition conducted by the City, this once undesirable property is now attractive and, further, may be purchased free and clear of all liens at the tax sale.

In such instances the buyer benefits from the prior use of public funds to improve the property through the demolition of a dilapidated, uninhabitable building; the City’s demolition lien is effectively extinguished; and the City is unable to collect any of the monies it utilized in improving the property.

II.A.4.c. Proposed Solution

Elkins seeks authority to enact an ordinance requiring payment of any demolition lien due at the time of a delinquent-tax sale and before the certificate of sale is issued, in the same way that W. Va. Code §11A-3-14 currently stipulates that, at such sales, “the sheriff shall require payment of any subsequent taxes due at the time of the sale before a certificate of sale is issued.” As a result, to

prevail at such an auction, a bidder would have to offer the highest bid that pays not only (1) the amount of taxes, interest and charges for which the tax lien on any real estate is being offered for sale but also (2) the amount of the City's demolition lien.

II.A.5.Right to Purchase Tax-Delinquent Properties

This subsection explains why the City of Elkins seeks the authority to exercise a right of first refusal to purchase any delinquent-tax property (especially including properties against which the city has filed a demolition or other lien) inside city limits for taxes owed before the property is listed for sheriff's auction.

II.A.5.a Specific Legal Barrier

Before a county tax sale can be held, the Sherriff's Office must publish the list of delinquent tax properties and give notice prior to the sale date fixed in the notice as a Class III-0 legal advertisement in per W. Va. Code §11A-3-2. The notice must contain a list of the properties, including the person charged with the taxes, quantity of land, local description and total amount of taxes, interest and charges due to date of sale. Furthermore, a property listed in the publication can be redeemed if all payments for delinquent real estate taxes are received by the Sheriff's Office within fourteen business days prior to the date of the sale (W. Va. §11A-3-4).

When tax-delinquent properties are sold at auction, there is currently no means of prevailing at that auction other than that stipulated in W.Va. Code §11A-3-14(a), i.e., offering the highest bid that pays at least the amount of taxes, interest and charges for which the tax lien on any real estate is being offered for sale. There is currently no other way to obtain title to such a property.

II.A.5.b. Specific Problem Caused by Legal Barrier

All too often, such properties are purchased—sometimes in large volumes—by speculators with little concern for the health of the surrounding neighborhoods and/or no particular plans to effect improvements to any structures on said properties. By contrast, it would be in the public's clear interest for the city to be able to obtain these properties so that it could, for example, sell or otherwise transfer them to a community housing development organization (see section II.A.7, below) for renovation/reconstruction as high-quality workforce housing, among other possible neighborhood revitalization scenarios. However, it would be a losing proposition to regularly compete with private bidders for such properties, as most cities would find themselves regularly outbid.

II.A.5.c. Proposed Solution

Elkins seeks authority to enact an ordinance giving the city right of first refusal to purchase any delinquent-tax property (especially including properties against which the city has filed a demolition or other lien) inside city limits for taxes owed before the property is listed for sheriff's auction.

Under the proposed authority, Elkins would be given the first opportunity to purchase any property (especially including properties against which the city has filed a demolition or other lien) within city limits for taxes owed. This would allow the deed, if the property is not redeemed, to be issued to the City, where, among other possibilities, and under authority sought in sections II.A.6 and II.A.7, below, the property could be sold directly to private or non-profit entities proposing projects with clear public benefits.

The time necessary for the City to decide whether to exercise this authority on any given property would not be more than 14 days, consistent with the amount of time given for property owners to redeem property prior to its sale.

II.A.6. Transfer or Lease of City Property to Private and Non-profit Entities

This subsection explains why the City of Elkins seeks the authority to sell without auction or lease city property at fair-market value to private purchasers in a manner that promotes economic development and/or the public good.

II.A.6.a Specific Legal Barrier

Under W.Va. Code § 8-12-18 (and except in limited circumstances involving sales to the United States, or a state or instrumentality thereof), municipalities may only sell their real or personal property for “fair and adequate” consideration at public auction (with sufficient legal advertisement). Similarly, municipalities may lease real or personal property, but only for “fair and adequate” consideration, and by resolution of the municipality’s governing body.

II.A.6.b. Specific Problem Caused by Legal Barrier

The requirements imposed by W.Va. Code § 8-12-18 to sell real property only at auction, and the requirement that any lease be for “fair and adequate” terms (which is generally interpreted to be equivalent to market rate), prevents cities from entering into transactions that could fill vacant buildings, attract businesses, provide revenue, and encourage the use of city properties to advance the public good.

In short, some of the authorities sought earlier in this section (such as the right of first refusal for properties being sold for delinquent taxes) will mean little in the absence of any ability to sell them at low cost to private or non-profit entities intending uses that are beneficial to the community. In fact, the requirements imposed by W.Va. Code §8-12-18 are really a disincentive against cities ever offering certain properties for sale, because of the impossibility of either avoiding undesirable uses (such as a gas station next to a historic property) or ensuring a strong public benefit.

II.A.6.c. Proposed Solution

Elkins seeks authority to enact an ordinance: 1) allowing the sale of real and personal property by the City at fair market value to private purchasers without auction in such a manner that promotes economic development or provides a service for the public good, 2) allowing the lease of real and personal property by the City to private lessees for less than fair market value if the private lessees will use the property in such a manner that promotes economic development or provides a service for the public good, 3) allowing the sale of real and personal property by the City at less than fair market value to nonprofit purchasers without auction, and 4) allowing the lease of real and personal property by the City at less than fair market value to nonprofit lessees.

II.B. Civil Service, Party Affiliation, Administrative, and Economic Development Authorities

Elkins has identified several miscellaneous current requirements of state law that impose unreasonable and counter-productive burdens on either city staff or on local or prospective businesses.

Therefore, in order to reduce these burdens and more efficiently and effectively advance various public interests, the city seeks the following miscellaneous civil service, party affiliation, administrative, and economic development authorities:

- The authority to employ part-time, non-civil-service police officers.
- The authority to raise the upper age limit for initial entry-level appointment of full-time civil-service officers from 40 to 45.
- The authority to eliminate requirements that political party membership be taken into account for appointments as election officials and to civil service and building commissions.
- The authority to reduce the number of business-license categories and/or reduce the fees charged to various categories.
- The authority to eliminate current distance requirements between churches and restaurants/bars.

II.B.1. Part-Time Police Officers

This subsection explains why the City of Elkins seeks the authority to employ part-time, non-civil-service police officers.

II.B.1.a Specific Legal Barrier

W. Va. Code Article 8-14 specifies how officers are to be appointed to civil-service police departments. In general, the article contemplates only the hiring of full-time officers with full civil-service status. Although §8-14-16 makes provision for the temporary hiring of special officers other than through the competitive civil-service process, these special officers may only serve for three months at a time.

II.B.1.b. Specific Problem Caused by Legal Barrier

Elkins has operated a civil-service police department since 1937. The department is currently funded for ten sworn, civil-service positions (and one chief). If Elkins were always able to field 10 officers throughout each week, this would still be a relatively tight level of staffing for a city of about 7,000 people, which is currently experiencing significant levels of crime.

However, even when all ten civil-service positions are technically filled, it is often the case that Elkins is nonetheless not able to field all 10 officers. For example, because many police officers are also reserve military members, a “filled” position may be held by someone who has been deployed overseas for a year or longer.

There is also a lag time between the appointment of new officers and both their graduation from the West Virginia police academy (a 16-week program) and their completion of the field-training period the Elkins Police Department requires of all new officers. During this time, although the positions are “filled,” the department does not actually have 10 independent officers who may respond to calls.

For example, at the time of this writing, the Elkins Police Department is “fully staffed”—but three members are currently at the academy and one is currently deployed, through spring of 2016, to Afghanistan. To cover for these “missing” four officers, the six remaining officers must work excessively long hours, risking mistakes caused by lack of sufficient rest, harming family relationships, and leading them to pursue other employment opportunities.

In these situations, it would be helpful if the city were able to augment its civil-service police force with part-time special police officers who could serve as needed, particularly to enforce traffic laws and/or respond to motor-vehicle accidents. Another similarly beneficial scenario would involve hiring or retaining officers above retirement age, who could bring their long experience to special assignments such as long-term drug investigations. But, as mentioned above, state law currently prevents municipalities from appointing special officers for longer than three months at a time.

II.B.1.c. Proposed Solution

Elkins seeks the authority to enact an ordinance that would expand its existing power, granted by W. Va. Code §8-14-16, to permit the non-competitive hiring of special (non-civil-service) police officers to serve as needed for indefinite periods of time. This ordinance would not affect civil service status or protections for current or future full-time officers, and Elkins would continue to

fully adhere to all civil-service requirements of the West Virginia Code. The total number of part-time special officer positions would be limited to no more than 25 percent of funded full-time civil-service positions in the city's department. Special police officers would not be used to avoid the need to fill full-time civil-service vacancies, and Elkins would continue to actively seek to fill all such vacancies. Part-time special officers would receive all training required of other officers (including successful completion of the academy's basic law enforcement course) and would be required to hold active West Virginia law enforcement certification.

II.B.2. Raising Maximum Age for Joining Civil Service Police Departments

This subsection explains why the City of Elkins seeks the authority to raise the upper age limit for initial entry-level appointments of full-time civil-service officers from 40 to 45.

II.B.2.a Specific Legal Barrier

W. Va. Code §8-14-12 stipulates that no applicant for initial appointment to a civil-service police department may be “more than forty years of age at the date of the individual’s application.”

II.B.2.b. Specific Problem Caused by Legal Barrier

As in many other West Virginia towns and cities, the Elkins Police Department sometimes struggles to find enough applicants to create civil service lists that are long enough not to be exhausted after filling just 1-3 positions. This problem has multiple causes, some of which—such as the inability of some candidates to pass the written test, the polygraph interview, or the psychological evaluation—are of course excellent reasons for rejection.

But the imposition of an upper age limit of forty years at the time of initial application seems arbitrary, excluding as it does some otherwise excellent candidates (in particular candidates with prior law-enforcement experience, a particularly desirable category, one of which had to be rejected during our most recent civil-service hiring evolution) who are otherwise entirely capable of meeting all other requirements and show strong potential for providing excellent service to the Elkins community.

The arbitrariness of this requirement is further demonstrated by the fact that it does not apply to sheriff’s deputies, who are already allowed to be 45 years old at time of initial application (W. Va. Code §7-14-8). In fact, because this discrepancy creates a dynamic in which it is easier for sheriff’s departments to attract veterans of city departments than vice versa, the requirement is not merely arbitrary but starkly unfair.

II.B.2.c. Proposed Solution

Elkins seeks authority to enact an ordinance raising the maximum age at time of application for entry-level civil-service police positions from 40 to 45 years, i.e., the identical requirement currently in place for sheriff’s deputies.

II.B.3. Party Membership Requirements for Election Boards and Civil Service Commissions

This subsection explains why the City of Elkins seeks the authority to eliminate requirements that political party membership be taken into account for appointments as election officials and to civil service and building commissions.

II.B.3.a Specific Legal Barrier

Various sections of state code stipulate the political party membership of certain election officials, civil service commissioners, and municipal building commissioners, as follows:

- W. Va. Code §3-1-29(a)3 and (b) provide, respectively, that (1) “no team of poll clerks or team of election commissioners shall consist of two persons with the same registered political party” and (2) such officials are to be nominated by the county executive committees of the two major political parties.
- W. Va. Code §3-3-5c provides that each pair of emergency absentee ballot commissioners at-large shall consist of “two persons with different political party affiliations,” also to be nominated by “the county executive committees of the two major political parties.”
- W. Va. Code §3-1-19(a)2A & B provide, respectively, that the two citizen members of a Board of Ballot Commissioners shall be appointed by the county executive committees of the two political parties whose members cast the largest and second-largest number of votes in the last preceding general election.
- W. Va. Code §8-15-12 and §8-14-7 provide that not more than two members of either a firefighters or police civil-service commission may be “adherents of the same political party.”
- W. Va. Code §8-33-3 provides that “no more than two thirds of the total number of members of the board of each [building] commission shall be from the same political party.”

II.B.3.b. Specific Problem Caused by Legal Barrier

Suitability for service in any of the above capacities is unaffected by political-party membership, so imposing party-membership requirements is irrational and needlessly restricts the pool of available candidates. In some instances, the best candidate might not be chosen because of this arbitrary requirement. Further, party politics have no place—and can even be detrimental to the public good—in a city, such as Elkins, that explicitly operates non-partisan elections.

II.B.3.c. Proposed Solution

Elkins seeks authority to enact ordinances eliminating all of the party-membership requirements listed in subsection II.B.3.a, above. Having eliminated party-membership requirements for election officials, it would make little sense to require that they be nominated by political party executive committees. Therefore, Elkins also seeks to enact an ordinance eliminating the latter requirement. These changes would allow Elkins to make selections for all of the positions listed in subsection II.B.3.a, above, based entirely on qualifications, with no need to inquire as to the party membership of potential candidates.

II.B.4. Business Licensing Categories and Fees

This subsection explains why the City of Elkins seeks the authority to reduce the number of business-license categories and/or reduce the fees charged to various categories.

II.B.4.a Specific Legal Barrier

W. Va. Code §8-13-4 permits cities to “enact an ordinance creating an annual general municipal business license for anything which requires a state license that is done within the corporate limits of a municipality, the tax for which may not exceed twenty dollars.” However, the city may not include under this “general” business license any category of business on which West Virginia Code imposes a state license fee; cities must continue to charge that fee at the municipal level as well.

II.B.4.b. Specific Problem Caused by Legal Barrier

Although the 2011 amendment creating the “general municipal business license” was a step in the right direction, it was a half measure. Because cities are not yet truly free to consolidate all business licenses for all categories of business operating inside their borders, staff members charged with processing such licenses are required to expend valuable time differentiating between categories of businesses for no clear public benefit. At the same time, businesses are not treated fairly, as the license amounts assigned to different categories do not seem based on rational distinctions between those categories. For example, as shown on the City of Elkins Application for Business License (Appendix A), private investigators are charged \$50 for their city business license, while attorneys (who arguably have higher earning potential) are charged only \$15.

II.B.4.c. Proposed Solution

Elkins seeks authority to enact an ordinance, expanding the authority provided under W. Va. Code §8-13-4, to allow the city to consolidate all business license categories (except for alcohol licenses), including those currently charged a state-specified fee, into one general category, for which we would establish one universal fee, not to exceed \$20. This will improve the efficiency of city staff and increase the perceived fairness of the city’s business-licensing requirements.

II.B.5. Distance between WVABCA License Holders and Churches

This subsection explains why the City of Elkins seeks the authority to eliminate current distance requirements between churches and restaurants/bars.

II.B.5.a Specific Legal Barrier

W. Va. Code §11-16-8(a)5 forbids the location of a restaurant or bar within 300 feet of a church or school.

II.B.5.b. Specific Problem Caused by Legal Barrier

Elkins is enjoying a surge of business owners interested in locating in its historic downtown district. One category of business particularly well suited for such a neighborhood is restaurants/bars. However, because there are several churches located in or around downtown Elkins, a significant number of storefronts that might otherwise offer ideal locations for such businesses are off limits for no publicly beneficial reason, posing an irrational obstacle to Elkins's continued economic revitalization.

II.B.5.c. Proposed Solution

Elkins seeks authority to enact an ordinance that would allow it to eliminate distance requirements between bars/restaurants and churches. Businesses holding licenses to sell alcohol should be judged on their performance, not on their inherent nature. If businesses located according to this new rule (i.e., closer than 300 feet to churches) proved incapable of adhering to community expectations concerning cleanliness, noise, and behavior of patrons, the city would still retain all the rights it already holds under state law to seek suspension of the license, regardless of location.

Appendices

City of Elkins

Municipal Home Rule Pilot Program Application Hearing Mandate Verification

CITY OF ELKINS

Van T. Broughton
Mayor

401 Davis Avenue
Elkins, West Virginia 26241

I, the undersigned Clerk of the City of Elkins, do hereby certify that on October 30, 2015 at 12:00 p.m. a Public Hearing was held before a special meeting of the Elkins Common Council, the subject of said hearing being the proposed City of Elkins Municipal Home Rule Application and Plan. Thirty days in advance of the public hearing, a notice of the public hearing was published as a Class II legal ad once each week for two successive weeks and a copy of the proposed City of Elkins Municipal Home Rule Application Plan was made available for public inspection at that time. The attached are true, correct and complete copies of the minutes evidencing the Public Hearing.

Witness the signature of the undersigned Clerk of the City of Elkins, West Virginia, and the seal of this City, this 9th day of November, 2015.



Clerk

Approved Minutes

**ELKINS COMMON COUNCIL
PUBLIC HEARING CONCERNING HOME RULE APPLICATION**

***401 Davis Avenue
Council Chamber, 2nd Floor
October 30, 2015
12:00 p.m.***

Mayor Broughton declared the public hearing concerning the city's home-rule application open at 12:10 p.m.

Jerry Gibson, of South Kerens Avenue, spoke in opposition to Elkins applying for home rule.

The mayor asked if anyone else wished to speak. There being no one, the mayor declared the hearing closed at 12:30 p.m.

**ELKINS COMMON COUNCIL
SPECIAL COUNCIL MEETING
MINUTES**

***401 Davis Avenue
Council Chamber, 2nd Floor
October 30, 2015
12:30 p.m.***

Elkins Common Council met in special session in the council chamber of city hall. Present were Mayor Van T. Broughton; Councilpersons N. E. Bross-Fregonara, M. D. Cuonzo, R.P. Dusenbury, M. L. Marstilller, E.R. Ochsendorf, D.C. Parker, M. D. Scott, L.H. Vest and R. A. Woolwine; City Attorney G. S. Roberts; City Clerk S.R. Stokes (acting as recording secretary); and Inter-Mountain Reporter B. Broschart.

Cm. C. L. Metheny, Police Chief C. Cross, City Treasurer T. Judy, Fire Chief T. W. Meader, and Operations Manager R.P. Pingley were absent.

NEW BUSINESS

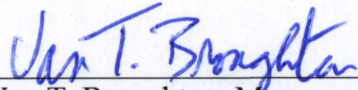
Cm. Scott, seconded by Cw. Bross-Fregonara, **MOVED APPROVAL OF ORDINANCE 204, AUTHORIZING THE SUBMISSION OF AN APPLICATION AND HOME RULE PLAN TO THE WEST VIRGINIA MUNICIPAL HOME RULE BOARD TO PERMIT THE CITY OF ELKINS TO PARTICIPATE IN THE WEST VIRGINIA MUNICIPAL HOME RULE PILOT PROGRAM, ON THE FIRST OF TWO READINGS. The motion carried.**

Approved Minutes

Cm. Woolwine, seconded by Cm. Ochsendorf, **MOVED ADJOURNMENT.** The motion carried.


The meeting adjourned at 12:33 p.m.

*Approved by council at the meeting
of November 5, 2015*



Van T. Broughton, Mayor

Attest:



Sutton R. Stokes, City Clerk

City of Elkins

Municipal Home Rule Pilot Program Application

Publication Mandate Verification

Legal Ad --- Class II

DATES PUBLISHED: September 29, 2015 AND October 6, 2015

FORM OF NOTICE OF PUBLIC HEARING

CITY OF ELKINS

APPLICATION UNDER HOME RULE PILOT PROGRAM

Notice is hereby given by the City of Elkins, West Virginia, that the City Council will hold a public hearing on Friday, October 30, 2015 at 12:00 p.m. at the Elkins City Council Chambers, 401 Davis Avenue, West Virginia for the purpose of providing members of the public an opportunity to speak either in favor of, or in opposition to, the proposed City of Elkins Application and Plan to participate in the West Virginia Home Rule Pilot Program. The comments provided by members of the public shall be considered by the City in the completion of the City's Application and Plan. A copy of the Application and Plan is on file in the office of the City Clerk of the City of Elkins and is available for review by members of the public Monday-Friday, 9 a.m.-4 p.m.

The first reading of the ordinance approving the City of Elkins Application and Plan to participate in the West Virginia Home Rule Pilot Program is scheduled to be held at a special meeting of the City Council at 12:15 p.m. on Friday, October 30, 2015 in the Elkins City Council Chambers, 401 Davis Avenue, West Virginia.

Sutton Stokes
City Clerk

Classified/Legal Advertising Invoice

The Inter-Mountain Legals

PO Box 1339

Elkins, WV
26241
(304) 636-2121

**CITY OF ELKINS
401 DAVIS AVE**

ELKINS, WV

26241

09/28/2015 11:02:10AM

No: 71786

Phone: 304 636-1414

Ad No 71786	Customer No: L01320	Start Date 09-29-2015	Stop Date 10-06-2015	Category: Announcements		Classification: Legal Notices				
Order No	Rate: LE	Lines: 27	Words: 212	Inches: 2.63		Cost 70.80	Payments .00	Balance 70.80		
Publications ... Runs Legals ... 2		Solicitor: JH	Origin: 0	Sales Rep: 0	Credit Card	Credit Card Number	Card Expire			
		<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td align="center">Identifier</td> </tr> <tr> <td>NOTICE OF PUBLIC HEARING</td> </tr> <tr> <td>CITY OF ELKINS</td> </tr> <tr> <td>APPLICATION UNDER HOME RULE PILOT PROGRAM</td> </tr> </table>							Identifier	NOTICE OF PUBLIC HEARING
Identifier										
NOTICE OF PUBLIC HEARING										
CITY OF ELKINS										
APPLICATION UNDER HOME RULE PILOT PROGRAM										
COPY										
*Extend Expiration Date										

State of West Virginia, County of Randolph, ss.

I, Heather Henline, General Manager of THE INTER-MOUNTAIN, a newspaper published at Elkins, in said county, do hereby certify that the annexed advertisement was published on the following dates:

9/29 10/6 _____

20 15 as required by law.

Given under my hand this 20th day of October, 20, 15

Heather Henline

General Manager

Printer's Fee: \$ 70.80

Subscribed and sworn to before me this 20th day of October, 20, 15

[Signature]
Notary Public

My Commission Expires the 9th day of February, 20, 20

ADNo: 71786 Customer Number: L01320
 Customer Name: SUTTON STOKES Company: CITY OF ELKINS
 Address: 401 DAVIS AVE
 City/St/Zip: ELKINS ,WV 26241
 Phone: (304) 636-1414 Solicitor: JH
 Category: 10 Class: 1000 Rate: LE-0 Start: 9-29-2015 Stop: 10-6-2015
 Lines: 27 Inches: 2.63 Words: 212

Credit Card: Expire:
 Order Number:
 Cost: 68.80 Extra Charges: 2.00 Adjustments: .00
 Payments: .00 Discount: .00
 Balance: 70.80

**NOTICE OF PUBLIC HEARING
 CITY OF ELKINS**

APPLICATION UNDER HOME RULE PILOT PROGRAM

Notice is hereby given by the City of Elkins, West Virginia, that the City Council will hold a public hearing on Friday, October 30, 2015 at 12:00 p.m. at the Elkins City Council Chambers, 401 Davis Avenue, West Virginia for the purpose of providing members of the public an opportunity to speak either in favor of, or in opposition to, the proposed City of Elkins Application and Plan to participate in the West Virginia Home Rule Pilot Program. The comments provided by members of the public shall be considered by the City in the completion of the City's Application and Plan. A copy of the Application and Plan is on file in the office of the City Clerk of the City of Elkins and is available for review by members of the public Monday-Friday, 9 a.m.-4 p.m.

The first reading of the ordinance approving the City of Elkins Application and Plan to participate in the West Virginia Home Rule Pilot Program is scheduled to be held at a special meeting of the City Council at 12:15 p.m. on Friday, October 30, 2015 in the Elkins City Council Chambers, 401 Davis Avenue, West Virginia.

Sutton Stokes
 City Clerk

9/29, 10/6

NOTICE OF PUBLIC HEARING

CITY OF ELKINS

APPLICATION UNDER HOME RULE PILOT PROGRAM

Notice is hereby given by the City of Elkins, West Virginia, that the City Council will hold a public hearing on Friday, October 30, 2015 at 12:00 p.m. at the Elkins City Council Chambers, 401 Davis Avenue, West Virginia for the purpose of providing members of the public an opportunity to speak either in favor of, or in opposition to, the proposed City of Elkins Application and Plan to participate in the West Virginia Home Rule Pilot Program. The comments provided by members of the public shall be considered by the City in the completion of the City's Application and Plan. A copy of the Application and Plan is on file in the office of the City Clerk of the City of Elkins and is available for review by members of the public Monday-Friday, 9 a.m.-4 p.m.

The first reading of the ordinance approving the City of Elkins Application and Plan to participate in the West Virginia Home Rule Pilot Program is scheduled to be held at a special meeting of the City Council at 12:15 p.m. on Friday, October 30, 2015 in the Elkins City Council Chambers, 401 Davis Avenue, West Virginia.

Sutton Stokes
 City Clerk

9/29, 10/6

City of Elkins

Municipal Home Rule Pilot Program Application

Ordinance Authorizing Submission of Application and Plan

ORDINANCE 204

AN ORDINANCE OF THE CITY OF ELKINS, WEST VIRGINIA, AUTHORIZING THE GOVERNING BODY OF THE CITY OF ELKINS TO SUBMIT ITS MUNICIPAL HOME RULE PILOT PROGRAM APPLICATION AND PLAN TO THE MUNICIPAL HOME RULE BOARD PURSUANT TO THE PROVISIONS OF WEST VIRGINIA CODE § 8-1-5a, GENERALLY, AND § 8-1-5a(f), PARTICULARLY.

The Common Council of the City of Elkins duly adopted a resolution on September 28, 2015 scheduling a public hearing on the City of Elkins Municipal Home Rule Pilot Program Application (the "Home Rule Application") for October 30, 2015.

The City Clerk caused to be published a notice of the public hearing on the Home Rule Application as required by the Act.

The City Clerk caused to be published the Notice of Proposed Enactment of the Proposed Ordinance as a Class II Legal Ad on September 29, 2015 and October 6, 2015 in *The Inter-Mountain* newspaper, as required by law.

A copy of the written plan and application has been available to the public and may be inspected by the public at the office of the City Clerk, 401 Davis Avenue, Elkins, West Virginia.

On October 30, 2015 at 12:00 p.m. in the Elkins City Council Chambers, 401 Davis Avenue, Elkins, West Virginia, the Common Council conducted a public hearing, during which interested parties had the opportunity to appear and their comments be heard and considered.

This Ordinance was presented to, and passed on first reading by, Council after the public hearing on October 30, 2015.

This Ordinance was presented to, and passed on second reading, by Council on November 9, 2015.

NOW THEREFORE, BE IT ORDAINED and ENACTED by the Common Council of the City of Elkins, that the Mayor, as the certifying official, is hereby directed to make submission to the Municipal Home Rule Board the City of Elkins Home Rule Application, pursuant to the rules and regulations found in West Virginia Code § 8-1-5a, generally, and § 8-1-5a(f), particularly (collectively, the "Act"). A copy of the Application is attached hereto and is intended to be read as a part hereof.

This Ordinance shall become effective upon passage.

PASSED AND APPROVED ON FIRST READING: October 30, 2015.


PASSED AND APPROVED ON FINAL READING: November 9, 2015.

CITY OF ELKINS, WEST VIRGINIA



Van T. Broughton, Mayor

Attest:



Sutton R. Stokes, City Clerk

City of Elkins

Municipal Home Rule Pilot Program Application

Attorney Opinion

MCNEER, HIGHLAND, McMUNN AND VARNER, L.C.

ONE RANDOLPH AVENUE

P. O. Box 1909

ELKINS, WV 26241-1909

TELEPHONE (304) 636-3553

FACSIMILE (304) 636-3607



WRITER'S DIRECT TELEPHONE
(304) 636-3553

WRITER'S E-MAIL ADDRESS
GSRROBERTS@WVLAWYERS.COM

November 9, 2015

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(1918 - 2002)
J. CECIL JARVIS
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WILLIAM L. FURY
(1917 - 2010)

SENIOR LEGAL ASSISTANTS

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JAMES T. DAILEY, JR.
MARK E. GAYDOS
WOODROW E. TURNER²
MARY BINNS DAVIS

1 ALSO ADMITTED TO PRACTICE IN OHIO
2 ALSO ADMITTED TO PRACTICE IN PENNSYLVANIA
3 CERTIFIED PUBLIC ACCOUNTANT IN WEST VIRGINIA
4 ALSO ADMITTED TO PRACTICE IN NORTH CAROLINA

West Virginia Municipal Home Rule Board
West Virginia Home Rule Pilot Program
Charleston, West Virginia

Re: Opinion Regarding the City of Elkins Home Rule Plan

Ladies and Gentlemen:

We have reviewed the City of Elkins's Municipal Home Rule Pilot Program proposed written application and plan (the "Plan"), which is being submitted to the Municipal Home Rule Board (the "Board") in order to permit the City of Elkins (the "City") to participate in the Municipal Home Rule Pilot Program established under West Virginia Code § 8-1-5a.

Based upon our examination of the Plan and understanding of the intent of the proposals included in the Plan, it is our opinion that the contents of the Plan, as proposed, complies with the required statutory requirements under W. Va. Code § 8-1-5a. Specifically, any ordinance, act, resolution, rule or regulation that the City will enact pursuant to the provisions of the Plan will not be contrary to:

1. Environmental law;
2. Bidding on government construction and other contracts;
3. The Freedom of Information Act;
4. The Open Governmental Proceedings Act;
5. Wages for construction of public improvements;
6. The provisions of W. Va. Code § 8-1-5a; and
7. The proposed City of St. Albans written Plan.

West Virginia Municipal Home Rule Board
November 9, 2015
Page 2

Finally, as evidenced by the documentation enclosed with the Plan, the City made available a copy of the Plan for public viewing and published thirty days' notice of a public hearing on the Plan, conducted such public hearing, and enacted an ordinance authorizing the City to submit the Plan. Further, as evidenced by the documentation enclosed with the Plan, the City is current in payment of all state fees.

Based upon the foregoing, we opine that the City's Plan for participation in the West Virginia Municipal Home Rule Pilot Program does not violate the provisions of West Virginia Code § 8-1-5a. This opinion is solely for the benefit of the Municipal Home Rule Board and the City of St. Albans in connection with the Plan.

Sincerely,

A handwritten signature in blue ink that reads "Geraldine J. Roberts". The signature is written in a cursive style with a long horizontal flourish extending to the right.

McNeer, Highland, McMunn & Varner, L.C.

City of Elkins

Municipal Home Rule Pilot Program Application

No Delinquent State of West Virginia Fees Statement

CITY OF ELKINS

Van T. Broughton
Mayor

401 Davis Avenue
Elkins, West Virginia 26241

November 9, 2015

Deliver Via Hand Delivery

Ms. Debbie Browning
West Virginia Development Office
West Virginia Home Rule Pilot Program
State Capitol Complex, Building 6, Room 553
Charleston, WV 25305-0311

Re: Statement as to Fees of the State of West Virginia

Ms. Browning:

The purpose of this letter is to confirm that, to the best of my knowledge and belief, after due inquiry, the City of Elkins is current on all fees payable by the City to the State of West Virginia. This statement is being provided to comply with the application requirements of the West Virginia Municipal Home Rule Pilot Program.

Sincerely,


Van T. Broughton

Mayor

City of Elkins

Municipal Home Rule Pilot Program Application

Agreement to Requirements Statement

CITY OF ELKINS

Van T. Broughton
Mayor

401 Davis Avenue
Elkins, West Virginia 26241

November 9, 2015

Deliver Via Hand Delivery

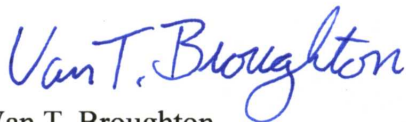
Ms. Debbie Browning
West Virginia Development Office
West Virginia Home Rule Pilot Program
State Capitol Complex, Building 6, Room 553
Charleston, WV 25305-0311

Re: Agreement to Provisions of Act

Ms. Browning:

The purpose of this letter is to confirm that we have reviewed the requirements set forth in W. Va. Code §8-1-5a and hereby certify that the City of Elkins agrees to comply with the requirements of that subsection so that it may participate in the Home Rule Pilot Program.

Sincerely,



Van T. Broughton

Mayor