

**City of Elkins, W. Va.**  
**August 31, 2020**

# Draft Charter Update

The attached document is a draft of an updated charter for the City of Elkins, prepared by city staff and attorney Tim Stranko, based on council’s discussion at its August 20 meeting.

***This version has not been proposed or endorsed by council.***

The final draft of any charter update endorsed by council will differ from this one. Even if council members agree that they wish to endorse in principle the changes stipulated in this draft (***and council has not yet reached consensus on any changes***), at least some further editing would be necessary to eliminate any inconsistencies or other typos. Obviously, if council rejects or modifies any of these provisions or inserts new ones, the final version would differ even more significantly from this one.

The purpose of this draft is to provide a concrete reference point for ongoing deliberation about what ***might*** be included in a more formal draft. This draft is being released in hopes of providing a clearer picture of what a charter update might look like and to help the public conversation become even more specific about the changes city residents do and don’t support. For more information about the charter-change process, please visit: [www.bit.ly/ElkinsCharterUpdate](http://www.bit.ly/ElkinsCharterUpdate).

The table below shows the most significant changes included in this draft.

<b>1901 Charter</b>	<b>Attached Draft Charter</b>
Stipulates a plan of government similar to what W. Va. state code now calls the Mayor-Council Plan (also known as “weak mayor/strong council”). Council and the mayor, as a collective group, are the city’s governing and administrative authority, with the mayor holding almost no independent authority.	Does not adopt a new plan of government. Mayor is assigned some additional supervisory authority (see below).
Lists more than 80 “corporate powers and duties of council.”	Replaces list with the provision that City of Elkins has “all the powers now or hereafter granted to municipal corporations and to cities of its class by the Constitution and general laws of the State.” (1.02)
City council has 10 members, two from each of the city’s 5 wards. Members are elected by the voters of the wards they represent.	Council would still have 10 members. Five of these would represent (and be required to live in) each of the city’s five wards. The other five would be “at-large” members who could live anywhere in the city. Both Ward and At Large Councilors would face election by all city voters. (2.02)
City elections held in March of odd-numbered years.	City elections would be held in June of odd-numbered years. (2.02)
Mayors serve two-year terms.	Mayors would serve four-year terms. (3.01)

<p>Clerk and treasurer are appointed to two-year terms. All other department heads (i.e., fire chief, operations manager, and police chief) are at-will employees.</p>	<p>All five administrative officers would be at-will employees. (Clerk: 3.06; Treasurer: 3.07)</p>
<p>Clerk is acting mayor in mayor’s absence or during vacancy in mayor’s office.</p>	<p>Council selects one of its own members to preside at meetings in mayor’s absence or to serve as acting mayor during extended absence. In case of vacancy in mayor’s office, council appoints a new mayor to serve until the next election. (3.05)</p>
<p>Mayor is assigned supervisory authority over the police chief.</p>	<p>Mayor is assigned supervisory authority over clerk and treasurer. (Clerk: 3.06; Treasurer: 3.07)</p>
<p>Contains no procedure for preparation and presentation to council of the annual budget.</p>	<p>Codifies a budget process, including an annual budget message and a five-year capital plan. (4.04, 4.05) Budget is supervised by the Finance Committee. (2.09)</p>
<p>Doesn’t stipulate any standing council committees.</p>	<p>Stipulates three:</p> <ul style="list-style-type: none"> <li>• Finance</li> <li>• Rules and Ordinances</li> <li>• Economic Growth and Development</li> </ul> <p>Council/the mayor may create more committees as needed.</p>

**Revision history:**

- August 27 version: original
- August 31 version: corrected small typos, eliminated gendered language

## **ARTICLE I**

### **POWERS OF THE CITY:**

#### **SECTION 1.01. INCORPORATION.**

The inhabitants of the portion of the County of Randolph, the State of West Virginia, within the geographic and political limits of the City of Elkins as they now exist, or as they may hereafter be, shall be and continue a body politic and corporate in perpetuity by the name and style of "The City of Elkins."

#### **SECTION 1.02. POWERS OF THE CITY.**

The City shall have all the powers specifically provided for in this Charter and shall also have all the powers now or hereafter granted to municipal corporations and to cities of its class by the Constitution and general laws of the State, together with all the implied powers necessary and proper to carry into execution the powers so granted. The enumeration herein of particular powers shall not be deemed exclusive, but the City shall have and may exercise all the powers which under the Constitution and laws of the State it is possible for a City to have, as fully and completely as though they were specifically enumerated in this Charter.

#### **SECTION 1.03. CONSTRUCTION.**

The powers of the City under this Charter shall be construed liberally in favor of the Citizens of the City, by and through their duly elected officials, and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power stated in this Article.

#### **SECTION 1.04. FORM OF GOVERNMENT.**

*Placeholder pending further deliberation by council. As currently written, this draft continues the current plan of government in use in Elkins, which resembles the plan called "Mayor-Council" ("weak mayor/strong council") in state code.*

#### **SECTION 1.05. INTERGOVERNMENTAL RELATIONS.**

The City may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with the State of West Virginia and any of its subdivisions and agencies, or with the United States government or any agency thereof, or with another of the United States.

#### **SECTION 1.06. RESIDENCY AND RESIDENT VOTER.**

As used throughout this Charter, the term "resident of the City" shall mean a person having declared and maintaining a primary residence located within the political boundaries of the City of Elkins and that occupies that residence for a majority of each calendar year, such that the West Virginia Department of Motor Vehicles and West Virginia Department of Tax and Revenue recognize that location as a legal residence. The term "resident voter" shall mean a resident of the City who is qualified to vote by the Constitution and the laws of the State of West Virginia.

**SECTION 1.07. WARDS DESIGNATED AND DESCRIBED.**

The territory of said City shall be divided into wards of approximately equal population as follows:

First ward. Beginning at the beginning point of the corporate boundary, at Bridge Number two, and running thence down the Tygarts Valley River, with the meanders thereof, to the point where said river crosses the western boundary of said city and with said western boundary to the place of beginning.

Second ward. Beginning at the point where the second corporate boundary line crosses the Beverly and Fairmont Pike, near the residence of W. H. Head and running thence with said Beverly and Fairmont Pike to the point where it intersects the Buffalo and Leading Creek Pike; thence with said last mentioned pike to the point where it crosses Cravens Run on the corporate boundary and shall include all the territory lying between said two pikes and the eastern boundary of the city.

Third ward. Beginning at the point where the boundary of the First Ward crosses the West Virginia Central and Pittsburgh Railway, in the Tygarts Valley River, at Bridge Number one, near the intersection of Railroad Avenue and First Street, and running thence down said river with the meanders thereof to the point where the said river crosses the northern boundary of the city, thence with said northern boundary, in a northern direction to the point where said boundary line crosses said railroad, near Maplewood Cemetery, thence with said railroad to the place of beginning.

Fourth ward. Beginning on the West Virginia Central and Pittsburgh Railway at the junction of Railroad Avenue and Second Street and running thence with Second Street to John Street; thence with John Street to Randolph Avenue, thence with Randolph Avenue to the junction of said avenue with Buffalo Street (a point in the boundary of the second ward) and shall include all the territory lying west and south of the streets just named which is not embraced in the First and Second Wards as above bounded.

Fifth ward. Shall include all the territory within the corporate boundary lying north of the fourth ward, between the Second and Third Wards as above bounded.

The number and boundary of the wards of said city may be changed at any time by the council thereof, but the number of wards shall not be reduced below three or increased above seven in number and shall be made as nearly equal in population as practical; provided, however, that no change in number or boundary of said wards shall be made nearer than sixty days before any general or special election to be held in said city; and provided, further, that no such change shall be made until public notice is given for at least thirty days, such notice to be posted at City Hall and at five or more public places in said city at least one of which notices shall be posted in each ward.

**SECTION 1.08. ELECTIONS.**

All City elections shall be nonpartisan. Except as otherwise provided herein, the provisions of general law with respect to the method and time for the filing of certificates of candidacy, conducting elections, and determining and certifying the results of such elections, shall apply to City elections.

**SECTION 1.09. OPEN GOVERNMENT.**

All records and documents of every office, department, division, board, commission or agency of the City shall be open to inspection by any citizen, representative of a civic organization or representative of the press at all reasonable times and under reasonable regulations established by Council; provided, however, records and documents authorized to be excluded from public disclosure under the West Virginia Code or other applicable law shall not be subject to the requirements of this section.

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## **ARTICLE II**

### **LEGISLATIVE BRANCH:**

#### **SECTION 2.01 POWERS AND DUTIES OF CITY COUNCIL.**

All powers of the City shall be vested in the Council and Mayor together as the Governing Body of the City, except as otherwise provided by law or this Charter, and the Council and Mayor shall provide for the exercise thereof and for the performance of all rights, duties and obligations allowed or imposed on the City by law. Council and the Mayor shall and may only act in all matters as a body, and only act upon a quorum vote in a duly noticed public meeting. Council members may not, without authority delegated by public vote of a quorum of Council, seek to influence or otherwise interfere with the authorized official acts of any officer or employee of the City.

#### **SECTION 2.02. COMPOSITION, ELIGIBILITY, ELECTION AND TERMS.**

- (a) **Composition.** There shall be a City Council of ten members elected by the qualified voters of the City at large. One Councilor shall reside in and be elected to represent each of the five wards of the City and Five Councilors shall be elected At Large without regard to ward of residence.
- (b) **Eligibility.** Only resident voters of the City, as defined by this Charter, shall be eligible to hold the office of Councilor. Ward Councilors shall reside in the Ward to be represented at the time of nomination and throughout the term of office. There shall be no other eligibility requirements. Council shall be the final arbiter of the eligibility of any prospective candidate.
- (c) **Nomination.** Any person who is eligible to hold office as a Councilor shall file for election in compliance with West Virginia and City law.
- (d) **Election.** Council elections shall be conducted every odd-numbered year on the first Tuesday of June. Beginning in June of 2021, election group one including (1) the Mayor and five (5) ward councilmembers are elected. Beginning in June of 2023, election group two consisting of five (5) at-large councilmembers are elected.
- (e) **Term.** Councilmembers shall serve a term of four (4) years, beginning on the first day of July immediately following the election of that member.
- (f) **Special Elections.** Special elections for any purpose must be authorized by a two-thirds majority public vote of a quorum of the Council and called by the Mayor. Notices of all special elections must be given by publication in a newspaper of general circulation, published in the City of Elkins.
- (g) **Canvas.** The Council shall sit as the Board of Election Canvassers in compliance with State and City law. In the case of a tie vote for any office, Council shall by majority vote determine the winning candidate.

- (h) Vacancy. The office of a Councilmember shall become vacant upon death, resignation, or forfeiture or removal from office in any manner authorized by law or by this Charter. A vacancy shall also exist whenever a Councilmember shall remove from the ward from which the nomination to serve was made. The vacancy shall be filled by appointment of a qualified person by Council. The office shall be placed on the next election for service of the remainder of the vacated term or for a new term, whichever is appropriate. *Note: See W.Va. Code §§ 3-1-2, 3-1-3*
- (i) Forfeiture of Office. A Councilmember shall automatically and by operation of law forfeit office if that Councilor:
  - (1) Lacks at any time during term of office any qualification for the office prescribed by this Charter or by law; or,
  - (2) Violates any express provision of this Charter; or,
  - (3) Is found by a two-thirds majority public vote of a quorum of the Council to have violated the conflict of interest provisions at section nineteen, article five, chapter eight of the West Virginia Code; or,
  - (4) Fails to attend three consecutive regular meetings of the Council without prior notice to Council of the absences.
  - (4) Members subject to forfeiture of office shall be notified by resolution of Council of said forfeiture. Forfeiting member's not voluntarily relinquishing office shall be removed by action of a court of competent jurisdiction in accordance with West Virginia law.

### **SECTION 2.03. COMPENSATION; EXPENSES.**

Councilors shall receive compensation for attendance at regular and special meetings as determined by Council and shall be reimbursed for actual and necessary expenses incurred in the performance of duties. No ordinance increasing such compensation shall become effective until the first day of July following the next regular election, provided that such election follows the adoption of such ordinance by at least six months. The compensation of any member of Council shall not be diminished during an active term of office.

### **SECTION 2.04. ETHICS AND PROHIBITIONS.**

- (a) Public Ethics. Councilors shall openly, competently and impartially conduct public business to the highest ethical standards and in strict compliance with West Virginia law. Officials found by a competent Court or Commission to have acted in violation of the West Virginia Governmental Ethics Act, the Open Governmental Proceedings Act, the Freedom of Information Act, or the United States or West Virginia Criminal Code may be subject to sanction by Council, including forfeiture of office, as authorized by this Charter and West Virginia law.
- (b) Holding Other Office. During a term of office, no Councilor shall hold any other elected public office, nor shall be employed by the City in any other capacity unless such employment is approved by public vote of the Council.

### **SECTION 2.05. JUDGE OF QUALIFICATIONS.**

Council shall be the judge of the eligibility of candidates for election and continuing qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have power to subpoena witnesses, administer oaths and require the production of evidence as authorized by West Virginia law. A member charged with conduct constituting grounds for forfeiture of office shall, upon request, be entitled to a public hearing. Notice of such hearings shall be published in one or more newspapers of general circulation in the City at least one week in advance of the hearing. Decisions made by the Council under this section shall be subject to judicial review in accordance with West Virginia law.

### **SECTION 2.06. INQUIRIES OR INVESTIGATIONS.**

The Council may make or cause to be made inquiries or investigations into the affairs of the City and the conduct of any City department, office or agency and for this purpose may invite or subpoena witnesses, administer oaths, take testimony and require the production of evidence as authorized by West Virginia law.

A written report of the findings of fact shall be made or endorsed by the Council within a reasonable time of the conclusion of any inquiry or investigation conducted under this section, which reports shall be made a public record, subject to West Virginia law and/or an Order of Court restricting disclosure.

Inquiries or investigations under this section shall be conducted only at a duly noticed public meeting called especially for the purpose of conducting an inquiry or investigation.

Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by Council shall be guilty of a misdemeanor and punishable by a fine of not less than \$50 nor more than \$500.

### **SECTION 2.07. INDEPENDENT AUDIT.**

Council shall provide for an annual independent audit of all City accounts and may provide for such more frequent audits as it deems necessary. Such audits shall be made by a licensed certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the City government or any of its officers. Audits shall be conducted in accordance with West Virginia law and regulation, and with guidelines promulgated by the West Virginia State Auditor.

### **SECTION 2.08. CONDUCT OF BUSINESS.**

- (a) Meetings. The Council shall meet regularly at such time and place as the Council may prescribe by rule. Special meetings shall be held upon the written petition of two or more Members of Council or the call of the Mayor. All meetings shall be public; however, the Council may recess for the purpose of discussing, in a closed executive session, any matter which is permitted by the West Virginia Code to be discussed in a closed or executive session; provided that the announcement and conduct of the executive session conform to the requirements of West Virginia law.
- (b) Rules and Journal. The Council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be a public record.

- (c) Voting. Voting, except as may be otherwise directed by the Mayor, shall be by oral ayes and nays, the final resolution of which shall be recorded in the journal. Six members of the Council, not including the Mayor, shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties that may be prescribed by the rules of the Council. No action of the Council, except as otherwise provided in this Charter, shall be valid or binding unless adopted by the affirmative public vote of a quorum of the Council.

#### **SECTION 2.09. STANDING COMMITTEES.**

- (a) Committees. There shall be standing committees of Council comprised of members of Council appointed by the Mayor and governed by rules adopted by Council. The Mayor shall appoint Chairs of the standing committees whose work will be supported by appropriate members of the City Staff. The standing committees shall include no fewer than three (3) and no more than five (5) Councilors. The missions of these committees are:
- (1) Finance Committee: Recommend budget to Council; Supervise budget and make reports to Council; Make fiscal forecasts and report to Council.
  - (2) Rules and Ordinances: Review and propose to Council new and amended ordinances and rules.
  - (3) Economic Growth and Development: Strategic forecasting and planning for economic growth; Promote and evaluate private investment opportunities; Coordinate and cooperate with County, Regional and State economic development agencies.

#### **SECTION 2.10. AD-HOC COMMITTEES.**

There may be one or more Ad-hoc committees of Council assigned a mission or missions by Council or the Mayor and comprised of members of Council appointed by the Mayor. The Mayor shall appoint Chairs of the Ad-hoc committee and direct support from appropriate members of the City Staff.

#### **SECTION 2.11. ACTION REQUIRING AN ORDINANCE.**

In addition to other acts required by law or by specific provision of this Charter to be done by ordinance, those acts of the City Council shall be by ordinance which:

- (a) Adopt or amend an administrative code or establish, alter or abolish any City department, office or agency;
- (b) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (c) Levy taxes and provide for the collection of fees of any lawful kind;
- (d) Grant, renew or extend a franchise;
- (e) Regulate the rate charged for its services by a public utility, to the extent permitted by law;
- (f) Authorize the borrowing of money;

- (g) Convey or lease or authorize the conveyance or lease of any lands from the City or to the City;
- (h) Require a license to do business;
- (i) Provide for a public improvement;
- (j) Lay out or vacate a public street, avenue, road, alley or way;
- (k) Change precinct boundaries; and,
- (l) Amend or repeal any ordinance previously adopted.

**SECTION 2.12. ORDINANCES IN GENERAL.**

- (a) Form. Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject, which shall be clearly expressed in its title. The enacting clause shall be "The City of Elkins hereby ordains ...". Any ordinance which repeals or amends an existing ordinance or part of the City code shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matter to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matter by underscoring or by italics.
- (b) Procedure. Ordinances shall be adopted in accordance with the following requirements, except where different or additional requirements are specified by law, in which event such other different or additional requirements shall be applicable. The Council may by ordinance specify other additional requirements for the enactment of ordinances or may prescribe a procedure for the enactment of ordinances in greater detail than prescribed by this Charter, but the Council shall not, except in an emergency as specified in this Charter or as otherwise provided by law, lessen or reduce the requirements of this Charter.
  - (1) An ordinance may be introduced by the Mayor or any Member at any regular or special meeting of the Council. Upon introduction of any ordinance, the City Clerk shall distribute a copy to the Mayor and each Council Member and shall maintain electronic and written copies to be made readily available to the public.
  - (2) A proposed ordinance shall be read by title at two meetings of Council, unless a member or a City resident demands that the ordinance be read in full, or in part, at one or both meetings. If such demand is made, the ordinance shall be read as demanded.
  - (3) At least five days before the meeting at which a proposed ordinance, the principal object of which is the raising of revenue for the municipality, is to be finally adopted, the Council shall cause notice of the proposed ordinance to be published as a Class I legal advertisement in compliance with the provisions of article three chapter fifty-nine of the West Virginia Code, and the publication area for such publication shall be the municipality. The notice shall state the subject matter and the general title or titles of such proposed ordinance; the date, time, and place of the proposed final vote on adoption; and the place or places within the City or on line where such proposed

ordinance may be inspected by the public. A reasonable number of copies of the proposed ordinance shall be kept at such place or places and be made available for public inspection. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

- (4) The affirmative public vote of a quorum of Council shall be required for the adoption of an ordinance.
  - (5) A proposed ordinance shall not be materially amended at the same meeting at which finally adopted. Upon challenge, a majority vote of Council shall determine whether a proposed amendment substantially amends the purpose or effect of the proposed ordinance. If so finding, the Mayor or other presiding officer shall disallow Council action on the proposed amendment.
- (c) The Council may adopt, by ordinance, standard building codes, housing codes, plumbing codes, sanitary codes, electrical codes, fire prevention codes, or any other code of technical regulations dealing with general public health, safety or welfare, or a combination of the same, or a comprehensive code of ordinances. Before any such ordinance shall be adopted, the proposed code shall be presented in a readable form to the Council at a regular meeting, and copies of such code shall be made available for public inspection. The ordinance adopting such code shall not set out said code in full but shall merely identify the same. The vote on adoption of said ordinance shall be the same as on any other ordinance. After adoption, such code or codes shall be filed as a permanent record in the office of the City Clerk. The City Clerk shall not be required to transcribe and record the same in the ordinance book as other ordinances are transcribed and recorded. It shall not be necessary that any such ordinance, either as proposed or after adoption, be published in any newspaper, and it shall not be necessary that the code itself be so published.

### **SECTION 2.13. EMERGENCY ORDINANCES.**

The City may enact an ordinance without complying with the rules prescribed in Section 2.10 only in the case of a pressing public emergency making procedure in accordance with the provisions of said section dangerous to the public health, safety or morals, and as certified by affirmative vote of two-thirds of the Members elected to the governing body; or, when otherwise provided by law. The nature of any such qualifying emergency or exemption shall be set out in full in the ordinance. The enacted emergency ordinance shall be placed on the agenda of the first regular meeting following the emergency for review and ratification.

### **SECTION 2.14. FRANCHISES.**

- (a) Franchises or permits granting the right of public service and/or the occupancy of any portion of public property shall be granted only by ordinance.
- (b) No grant of franchise shall be made without, at the time of making it, providing that the grantee shall indemnify the city against all damages caused by construction, maintenance or operation of such works and/or services. Additional provisions and conditions shall be made for the protection of the public against damage or inconvenience by reason of the construction, maintenance or operation thereof.

**SECTION 2.15. CODIFICATION AND PRINTING.**

To the extent that it has not already done so, within three years after adoption of this Charter and at least every ten years thereafter, the Council shall provide for the preparation of a general codification of all City ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the Council by ordinance and shall be published promptly in bound or loose-leaf form and electronically, together with the Charter and any amendments thereto. This compilation shall be known and cited officially as the Elkins City Code. Copies of the code shall be furnished to City officers, placed in the City library, in the City Clerk's office and on an on-line hosting service for free public reference.

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**ARTICLE III**

**EXECUTIVE BRANCH:**

**SECTION 3.01. APPOINTMENT, POWERS AND DUTIES OF THE MAYOR.**

The Mayor shall be elected at large by the qualified voters of the City, and shall serve a term of four years, beginning on the first day of July following election.

- (a) The Mayor shall be recognized as the chief executive officer and head of government of the City. The Mayor shall exercise all powers and perform all duties vested in or imposed by this Charter, ordinance, general law or rule necessarily implied therefrom in order to carry out the functions of the office.
- (b) The Mayor shall nominate for service officers and members of independent boards, agencies or commissions, the City Clerk, Police Chief, the Fire Chief, City Treasurer, the City Attorney, the Judge of the Municipal Court and the Operations Manager, which nominations shall be subject to the approval of Council.
- (c) The Mayor shall be the presiding officer of the Council, and, as such, shall be bound by all attendance regulations governing Councilmembers.
- (d) The Mayor may vote on a matter before Council only upon a tie vote of Council.
- (e) In the event of the temporary absence of the Mayor at any meeting of Council, a majority of Councilmembers present at such meeting shall select one of their number to serve as chair of the meeting. In the event of an extended absence of the Mayor, a majority of Councilmembers shall select one of their number to serve as Acting Mayor.
- (f) The Mayor shall see that all laws, ordinances and provisions of this Charter and acts of the Council, subject to enforcement by the City, are faithfully executed and enforced.

**SECTION 3.02. QUALIFICATIONS OF MAYOR.**

Prior to election and throughout a term of office the Mayor shall be a resident voter of the City of Elkins.

**SECTION 3.03. COMPENSATION OF MAYOR.**

The Mayor shall receive compensation as determined by Council and shall be reimbursed for actual and necessary expenses incurred in the performance of duties. No ordinance increasing such compensation shall become effective until the first day of July following the next regular election, provided that such election follows the adoption of such ordinance by at least six months. The compensation of the Mayor shall not be diminished during an active term of office.

**SECTION 3.04. PUBLIC ETHICS AND PROHIBITIONS.**

- (a) Public Ethics. The Mayor shall openly, competently and impartially conduct public business to the highest ethical standards and in strict compliance with West Virginia law. If found by competent Court or Commission to have acted in violation of the West Virginia Governmental Ethics Act, the Open Governmental Proceedings Act, the Freedom of Information Act, or the United States or West Virginia Criminal Code, the Mayor may be subject to sanction by Council, including forfeiture of office as authorized by this Charter and West Virginia law.
- (b) Holding Other Office. During term of office, the Mayor shall hold no other elected public office nor be employed by the City in any other capacity unless such employment of approved by public vote of Council.

**SECTION 3.05. VACANCIES; FORFEITURE OF OFFICE; REMOVAL FROM OFFICE; FILLING OF VACANCIES.**

- (a) Vacancies. The office of a Mayor shall become vacant upon death, resignation, or forfeiture or removal from office in any manner authorized by law or by this Charter. A vacancy shall also exist whenever a qualified person has not been elected to a position of Mayor under the provisions of this Charter.
- (b) Forfeiture of Office. A Mayor shall automatically and by operation of law forfeit office if the Mayor:
  - (1) Lacks at any time during term of office any qualification for the office prescribed by this Charter or by law; or,
  - (2) Violates any express prohibition of this Charter; or,
  - (3) Is found by public vote of Council to have violated the conflict of interest provisions at section nineteen, article five, chapter eight of the West Virginia Code; or,
  - (4) Fails to attend three consecutive regular meetings of the Council without prior written notice to Council of the absence.
  - (5) If the Mayor is subject to forfeiture, the Mayor shall be notified by resolution of Council of said forfeiture. A forfeiting Mayor not voluntarily relinquishing office shall be removed by action of a competent court.
- (c) Filling of Vacancies. The filling of a vacancy in the Office of Mayor shall be by a qualified person appointed by majority vote of a quorum of Council within 60 (sixty) days after the occurrence of the vacancy. The office shall be placed on the next election for service of the remainder of the vacated term or for a new term, whichever is appropriate.  
*Note: See W.Va. Code §§ 3-1-2, 3-1-3*

**SECTION 3.06 CITY CLERK.**

Council may, upon nomination by the Mayor, appoint an individual to serve as City Clerk at the will and pleasure of the Council. Compensation for the City Clerk shall be fixed by the City Council. Except as otherwise provided in this Charter and subject to the supervision of the Mayor, the Clerk shall:

- (a) Be the chief custodian of all Municipal documents and records of the City, except as otherwise specified in this Charter.
- (b) Act as the certifying officer of the City with respect to all official documents requiring such certification and shall be the custodian of the corporate seal of the City.
- (c) Serve as the Chief Election Officer of the City, and, in that capacity, plan for and administer City elections and the Board of Canvas in accordance with the law.
- (d) Establish and maintain an orderly system for filing and archiving City records in secure containers; Prepare City letters, correspondence, and other official documents of the City.
- (e) Give notice of and attend all meetings of Council, keep the journal of its proceedings, authenticate by signature and record in full in a book kept for the purpose all ordinances and resolutions of the Council, prepare and keep up to date an index of all such ordinances and resolutions, and keep all such records available for public inspection.
- (f) Make and certify copies of any ordinance, resolution or order of Council.
- (g) Prepare and cause to be served all notices required to be given to any person, firm or corporation, and after the proper service and return of any notice, to file and preserve the same.
- (h) Perform such other duties as may be required by this Charter, by general law, or by City ordinance or lawful order of the Mayor.

**SECTION 3.07 APPOINTMENT, POWERS AND DUTIES OF THE CITY TREASURER**

Council may, upon nomination by the Mayor, appoint an individual to serve as City Treasurer at the will and pleasure of the Council. Compensation for the City Treasurer shall be fixed by the City Council. Except as otherwise provided in this Charter and subject to the supervision of the Mayor, the Treasurer shall:

- (a) Administer the fiscal affairs of the City under the direction and supervision of the Mayor and City Council and shall competently and fairly exercise the power and duties described in this section.
  - (1) Maintain lawful, accurate and timely financial records of the City.
  - (2) In collaboration with the City Council, prepare the annual and capital program.
  - (3) Propose to the Mayor official acts of the City, including ordinances and policies, to ensure and document the lawful management of City funds.

- (4) In collaboration with the Mayor, monthly submit to the Council and make available to the public complete reports on the finances and administrative activities of the City. These reports shall be made in accordance with generally accepted accounting principles for municipal governments and agencies.
- (5) In collaboration with the Mayor, prepare and make available to the public reports on the finances and administrative activities of the City as of the end of each fiscal year. The report on finances shall be made in accordance with generally accepted accounting principles for municipal governments and agencies.
- (6) Perform such other duties as may be required by this Charter, by general law, or by City ordinance or lawful order of the Mayor.

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## **ARTICLE IV**

### **FINANCIAL PROCEDURES:**

#### **SECTION 4.01. FISCAL YEAR.**

The fiscal year of the City shall begin on the first day of July and end on the last day of June.

#### **SECTION 4.02. SUBMISSION OF BUDGET AND BUDGET MESSAGE.**

On or before the 15th day of March of each year, the Finance Committee shall submit to the Mayor and Council a budget for the ensuing fiscal year and an accompanying budget message.

#### **SECTION 4.03. BUDGET MESSAGE.**

The Finance Committee budget message shall explain the budget both in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies of the City for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the City's debt position and include such other material as the Finance Committee deems desirable.

#### **SECTION 4.04. BUDGET.**

The budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year and, except as required by law or this Charter, shall be made in accordance with generally accepted accounting principles for municipal governments and agencies. In organizing the budget, the Treasurer shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose or activity, and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections:

- (a) Proposed expenditures for current operations during the ensuing fiscal year, detailed by offices, departments and agencies in terms of their respective work programs, and the method of financing such expenditures;
- (b) Proposed capital expenditures during the ensuing fiscal year, detailed by offices, departments and agencies when practicable, and the proposed method of financing each such capital expenditure;
- (c) Anticipated net surplus or deficit for the ensuing fiscal year of each utility or other facility owned or operated by the City and the proposed method of its disposition; subsidiary budgets for each such utility or facility giving detailed income and expenditure information shall be attached as appendices to the budget.

The total of proposed expenditures shall not exceed the total of estimated income.

**SECTION 4.05. CAPITAL PROGRAM.**

- (a) Submission to Council. The Mayor shall prepare and submit to Council a five-year capital program at least three weeks prior to the final date for submission of the budget.
- (b) Contents. The capital program shall include:
  - (1) A clear general summary of its contents;
  - (2) A list of all capital improvements which are proposed to be undertaken during the five fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements;
  - (3) Cost estimates, method of financing and recommended time schedule for each such improvement; and
  - (4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above information shall be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

**SECTION 4.06. COUNCIL ACTION ON BUDGET.**

- (a) Notice and Hearing. The Council shall publish in one or more newspapers of general circulation in the City the general summary of the budget.
- (b) Amendment Before Adoption. After public hearing, the Council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than the total of estimated income.
- (c) Adoption. The Council shall adopt the budget on or before the 28th day of March of the fiscal year currently ending. Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated.

**SECTION 4.07. COUNCIL ACTION ON CAPITAL PROGRAM.**

- (a) Notice and Hearing. The Council shall publish in one or more newspapers of general circulation in the City the general summary of the capital program.
- (b) Adoption. The Council by resolution shall adopt the capital program with or without amendment after the public hearing and on or before the 28th day of March of the current fiscal year.

**SECTION 4.08. PUBLIC RECORDS.**

Copies of the budget and the capital program as adopted shall be public records and shall be made available to the public at suitable places in the City.

**SECTION 4.09. AMENDMENTS AFTER ADOPTION.**

- (a) Supplemental Appropriations. If during the fiscal year the Treasurer certifies that there are available for appropriation revenues in excess of those estimated in the budget, the Council by public vote may make supplemental appropriations for the year up to the amount of such excess.
- (b) Emergency Appropriations. To meet a public emergency affecting life, health, property or the public peace, the Council may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with this Charter. To the extent that there are no available unappropriated revenues to meet such appropriations, the Council may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.
- (c) Reduction of Appropriations. If at any time during the fiscal year it appears probable to the Treasurer that the revenues available will be insufficient to meet the amount appropriated, the Treasurer shall report to the Council without delay, indicating the estimated amount of the deficit, any remedial action taken by him and his recommendations as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or minimize any deficit, and for that purpose it may by public vote reduce one or more appropriations.
- (d) Transfer of Appropriations. At any time during the fiscal year, the Treasurer may transfer part or all of any unencumbered appropriation balance among programs within a department, office or agency and, upon written request by the Treasurer, the Council may by public vote transfer part or all of any unencumbered appropriation balance from one department, office or agency to another.
- (e) Limitations; Effective Date. No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

**SECTION 4.10. LAPSE OF APPROPRIATIONS.**

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned; the purpose of any such appropriation shall be deemed abandoned if three years pass without any disbursement from or encumbrance of the appropriation.

**SECTION 4.11. ADMINISTRATION OF BUDGET.**

- (a) Payments and Obligations Prohibited. No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made, and unless the City Treasurer or designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provision of this Charter shall be void, and any payment so made illegal; such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation, and the authorizing officer shall also be liable to the City for any amount so paid. However, except where prohibited by law, nothing in this Charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, provided that such action is made or approved by ordinance.

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## **ARTICLE V**

### **PLANNING AND ZONING:**

#### **SECTION 5.01. PLANNING COMMISSION AND BOARD OF ZONING APPEALS.**

The Council may, by ordinance, create a Planning Commission and a Board of Zoning Appeals, and such other administrative bodies as it now is, or may hereafter be, authorized to create pursuant to the provisions of the West Virginia Code. The Mayor shall nominate, and Council shall, by majority vote, appoint members of said bodies and establish all rules and regulations pertaining thereto.

#### **SECTION 5.02. COMPREHENSIVE PLAN.**

The Planning Commission shall recommend to Council a comprehensive plan in accordance with the provisions of article three, chapter eight-A of the West Virginia Code. Upon adoption by Council, the Planning Commission shall ensure that the plan be used as a guide to accomplish the coordinated and compatible development of land within the City. The Planning Commission shall, from time to time, review the plan and make recommendations on any matter to be considered by Council regarding the plan or its ongoing implementation.

#### **SECTION 5.03. MEMBERSHIP AND VACANCIES IN OFFICE.**

Members of the Planning Commission and Board of Zoning Appeals shall be resident voters of the City. The office of a member of the Planning Commission and the office of a member of the Board of Zoning Appeals shall become vacant upon death, resignation, removal from office, or failure to attend three consecutive regular meetings without being excused by the Commission or by the Board, as the case may be, either before or after such failure of attendance. Upon such vacancy, Council shall, by majority vote, appoint a qualified successor to fill that vacancy.

## **ARTICLE VI**

### **NOMINATIONS AND ELECTIONS:**

#### **SECTION 6.01. CITY ELECTIONS.**

- (a) Regular Elections. The regular City election shall be held on the second Tuesday in June in each odd-numbered year.
- (b) Qualified Voters. All citizens residing within the City as defined by the Charter and otherwise qualified by the Constitution and laws of the State of West Virginia to vote in the City shall be qualified voters of the City within the meaning of this Charter.
- (c) Conduct of Elections. The City Clerk is the Chief Election Officer of the City, and is responsible for the free, fair and lawful conduct of City elections. Except as otherwise provided by this Charter, the provisions of the general election laws of the State of West Virginia shall apply to elections held under this Charter. To the extent that it has not already done so, the Council shall adopt by ordinance all regulations which it considers desirable, consistent with law and this Charter.
- (d) Election Rotation Sequence: Beginning in June of 2021, election group one including (1) the Mayor and five (5) ward councilmembers are elected. Beginning in June of 2023, election group two consisting of five (5) at-large councilmembers are elected.

#### **SECTION 6.02. NOMINATIONS AND CERTIFICATION OF CANDIDATES.**

- (a) The conduct of all municipal elections shall be integrated with the system of “permanent registration of voters,” and those provisions of Chapter Three of the West Virginia Code that integrate county-state elections with the “permanent registration system” are hereby incorporated by reference, to the extent reasonably applicable.
- (b) Except as otherwise provided herein, the provisions of general law with respect to the method and time for the filing of certificates of candidacy, conducting elections, and determining and certifying the results of such elections, shall apply to City elections.
- (c) All City elections shall be nonpartisan. Any person who is eligible to hold and seeks to hold the office of Mayor or member of Council shall comply with the requirements of West Virginia law.
- (d) Withdrawal of Candidacy. Any candidate wishing to withdraw candidacy shall notify the City Clerk in writing of the same in accordance with the requirements of general statutory law.
- (e) Write-In Candidates. A write-in candidate's certificate of announcement of candidacy shall be in accordance with the requirements of general statutory law.

**SECTION 6.03. BALLOTS.**

(a) Names on Ballots.

- (1) The names of all candidates nominated for elective office, except those who have withdrawn, died or become ineligible, shall be placed on the official ballots in accordance with general statutory law.
- (2) If two or more candidates for the same office have the same surname or surnames so similar as to be likely to cause confusion, their residence addresses shall be placed with their names on the ballot.
- (3) The position of names on the ballots shall be in accordance with the requirements of general statutory law.

**SECTION 6.04. DETERMINATION OF ELECTION RESULTS.**

- (a) Number of Votes. Every qualified voter shall be entitled to cast one vote for a nominated candidate.
- (b) The candidates who receive the greatest number of the total votes cast by the qualified voters of the City at large, as determined by the City Clerk, shall be declared by the City Clerk to be elected.
- (c) Except as otherwise provided in this Charter, the provisions of general law with respect to the method and time for the filing of certificates of candidacy, nominating candidates, conducting regular and special Municipal elections, and determining and certifying the results of such elections, so far as applicable, shall apply to elections held under this Charter.

## **ARTICLE VII**

### **PROHIBITIONS AND GENERAL PROVISIONS:**

#### **SECTION 7.01. PROHIBITIONS.**

- (a) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any City elective or appointive position because of race, sex (including gender, pregnancy, gender identity and sexual orientation), disability, age, political or religious opinions or affiliations, or any other non-merit based factor.
- (b) No person who seeks appointment or promotion with respect to any City position or appointive City administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with any test, appointment, proposed appointment, promotion or proposed promotion.
- (c) No person, group, organization or corporation shall orally, by letter or otherwise solicit or assist in soliciting any assessment, subscription or contribution for any City election from any person holding any compensated appointive City position.
- (d) No person who holds any compensated appointive City position shall make, solicit or receive any contribution to the campaign funds for City elections of any political party or any candidate for City office or take any part in management, affairs or political campaign for City elections of any political party, but every person may exercise rights as a citizen to express opinions and to vote.

#### **SECTION 7.02. GIFTS.**

No person, firm or corporation shall give or offer to any City officer, employee or agent, nor shall any City officer, employee or agent be permitted to accept, receive or solicit from any person, firm or corporation, any free pass or free transportation or free gift of the same, for himself or other person, or any free gift of any water, light or heat, or any other thing of value, from any person, firm or corporation having any franchise or contract from, under or with said City, or from any other officer, agent or employee of said City, or from any other person whatsoever, who may in any way or manner, be affected by the performance or non-performance of any official duty or obligation by such officer, employee or agent of said City, and the acceptance or solicitation of anything herein forbidden, shall be absolute ground of removal or dismissal from office, by the Council in the case of an elective office, and by the appointing power in the case of any appointive office.

#### **SECTION 7.03. HOLDING TWO OFFICES.**

No officer of the city shall hold two offices with the city at the same time or be employed by the city in any other capacity, without first having the consent of the Council.

**SECTION 7.04. OATHS AND BONDING OF OFFICERS AND EMPLOYEES.**

- (a) Every person elected or appointed to any office, before proceeding to exercise the authority, or discharge the duties thereof, shall take the oath or affirmation prescribed by the Constitution of this State.
- (b) The Mayor, City Clerk, City Treasurer, Municipal Court Judge, Police Chief, Fire Chief and other officer or employee of the City designated by Council with sole or shared authority to authorize dispersal of public funds shall, before entering upon the discharge of their respective duties, give an official bond conditioned for the faithful performance of such duties as are prescribed by law, in an amount as required by Council and at the expense of the City.
- (c) The City Clerk shall record and maintain said bonds, which shall be open to public inspection.
- (d) All bonds, obligations or other writings taken in pursuance of any provisions of this Charter shall be made payable to "the City of Elkins."

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