



# CITY OF ELKINS

MUNICIPAL HOME RULE AMENDMENT  
TO THE APPROVED WRITTEN PLAN



# Municipal Home Rule Program

## APPLICATION CHECKLIST

<b>SECTION I: APPLICANT INFORMATION</b>	
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3	General Information
3	Municipal Classification
5 - 8	Specific Issue(s) to be Addressed
4	Issue(s) Category: Tax/Organization/Administrative/Personnel/Other

<b>SECTION II: NARRATIVE</b>	
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5 - 8	Specific state laws, policies, acts, resolutions, rules, or regulations that are preventing the municipality from carrying out duties in the most cost effective, efficient, and timely manner.
5 - 8	Specific problem(s) created by the laws, policies, acts, resolutions, rules, or regulations.
5 - 8	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.

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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 Jerry A Marco  
*Contact Person:* City Clerk Jessica R. Sutton  
*Address:* 401 Davis Avenue, Elkins, WV 26241  
*Telephone:* (304) 636-1414, ext. 1211  
*Email:* [jsutton@cityofelkinswv.com](mailto:jsutton@cityofelkinswv.com)  
*2020 census:* 6,934

### I.B. Municipal Classification

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

### I.C. Category of Issues to be Addressed

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

## Section II: Narrative

In 2015, pursuant to the authority provided by W. Va. State Code Section 8-1-5a, the Municipal Home Rule Board (hereinafter the “Board”) selected the City of Elkins to participate in the West Virginia Home Rule Pilot Program and approved the original Home Rule Plan of Elkins. As evidenced by the success of the Pilot Program statewide and its eventual permanency authorized by the Legislature, and specifically by the initiatives approved in Elkins’ original plan, our approved 2017 amended plan, and depicted in our Annual Reports, Elkins has successfully and responsibly exercised its authority under Home Rule and has, without challenge from either its City Council or citizenry, judiciously implemented much of its plan.

Under W.Va. State Code Section 8-1-5a(l), municipalities participating in the Municipal Home Rule Program may amend their written plans. For the reasons set forth herein, the City of Elkins is now requesting that the Board authorize the following amendments to Elkins’ previously approved plan.

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 issues more typical of much larger cities. In crafting its home-rule application and amendments, the City has sought to identify authorities that will help it better respond to these issues.

The home-rule authorities sought by the City of Elkins in this amendment relate to the City’s ability to generate and allocate funds in support of its municipal court; more easily dispose of real estate; and hire appropriate personnel. In the sections that follow, each authority is discussed, with reference to:

- Specific state laws 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. Disposition of Real Estate

#### II.A.1 Specific Legal Barrier

W. Va. Code §8-12-18 (“Sale, lease, or disposition of other municipal property”) sets forth the authority under which municipalities may sell, lease, or dispose of any of its real or personal property. Currently under subsection (b) the sale of any publicly owned real or personal property valued \$1000 or greater must be conducted by public auction and noticed as a Class II legal advertisement in compliance with the provisions of §59-3-1. Further, subsection (c) permits the leasing of real or personal property by a municipality only for a fair and adequate consideration and only after a public hearing having been noticed by a Class I legal advertisement.

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

There are few reasons why a municipality owns property, e.g., for the purpose of housing employees or equipment needed in the delivery of public services; to preserve public access to facilities such as parks

or community centers; in the execution of a public works project; or because a nuisance or public safety concern precipitated the need for the municipality to take ownership to address the hazard. In many areas of our city, particularly those with a higher concentration of population, parcels of land are small. These parcels, because of their size and proximity to neighboring parcels, are not attractive to any purchasers beyond the neighboring property owners.

In 2020, the city gained ownership of three parcels of land. Each parcel had contained a dilapidated structure which the city demolished, at the expense of either the property owner or taxpayers. In each situation the city was left with a small, cleared parcel unsuitable for any municipal purpose. In two of the three situations, adjacent property owners expressed interest in purchasing the property. However, the city was obligated by law and did perform, at taxpayer expense, the necessary procedures to advertise and auction the properties. Two of the three properties were successfully sold at auction. The third was bid upon by an adjacent owner, but it was determined not to be fair and adequate compensation and so was rejected. The city continues to own and maintain this property today.

### II.A.3 Proposed Solution

The City of Elkins is proposing the enactment of an ordinance to allow (1) the sale of municipal property to a private individual for fair and adequate consideration upon the determination of council that the action promotes economic development or public good, without the requirement to publish a Class II legal advertisement or hold a public auction; (2) the sale of municipal property to a registered 501(c)(3) organization for fair and adequate consideration without alone considering the commercial or market value of the property, and without the requirement to publish a Class II legal advertisement or hold a public auction; and (3) the lease of municipal property to private lessee for less than fair and adequate consideration upon the determination by council that the lease promotes economic development or provides services for the public good.

## II.B. Municipal Court Technology and Maintenance Fee

### II.B.1 Specific Legal Barrier

W. Va. Code § 8-11-1(2) regarding municipal powers and ordinance procedures, grants authority to the City of Elkins to prescribe reasonable penalties for violation of its ordinances, orders, bylaws, acts, resolutions, rules, and regulations, in the form of fines, forfeitures, and confinement in the county or regional jail.

Per W. Va. Code § 8-12-5(58), municipal penalties for the offenses and violations of municipal ordinances may not exceed any penalties provided for a like offense in State Court.

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

The City of Elkins Municipal Court exists pursuant to the authority granted in W. Va. Code § 8-10-2. As part of the operation of this court, technology and maintenance fees are incurred at a cost of \$6,316.00 annually, while the revenues generated by the existing municipal court technology and maintenance fee have remained stagnant at less than \$275.00 annually.

Nowhere within W. Va. Code 8-10-2, 8-11-1, or 8-12-5 does it state that a municipality has the legal authority to specify court needs or create specific court fees to be paid by individual defendants appearing before it to address these needs. While the municipal court is permitted to collect fees for

violations, pursuant to state code, a sizeable portion of the monies collected are sent to various state funds, including the Crime Victim’s Compensation Fund, the Police Training Fund, and the Regional Jail and Correctional Facility Development Fund. This leaves little designated money for the operation of the municipal court, which must therefore be subsidized by the general fund.

### II.B.3 Proposed Solution

In 2017 the City of Elkins was granted authority by the West Virginia Municipal Home Rule Board to enact an ordinance allowing a Municipal Court Technology and Maintenance Fee to be assessed against each person convicted within its municipal court of up to \$1.00. City of Elkins Ordinance #244 was adopted on September 21, 2017 and took immediate effect.

The City of Elkins is requesting permission to enact an ordinance increasing the maximum amount of the Municipal Court Technology and Maintenance Fee assessed to \$10.00 per convicted individual. This action has the potential to increase municipal court revenues to nearly \$3,000 annually. While still well below the cost of the technology expenses, the requested increase would decrease the burden on the city’s general fund.

## II.C. Assignment of Court Costs for Municipal Court Proceedings

### II.C.1 Specific Legal Barrier

W. Va. Code § 8-11-1(2) regarding municipal powers and ordinance procedures, grants authority to the City of Elkins to prescribe reasonable penalties for violation of its ordinances, orders, bylaws, acts, resolutions, rules, and regulations, in the form of fines, forfeitures, and confinement in the county or regional jail.

Pursuant to W. Va. Code § 8-12-5(58), municipal penalties for the offenses and violations of municipal ordinances may not exceed any penalties provided for a like offense in state court.

### II.C.2 Specific Problem Caused by Legal Barrier

As described in section II.B.2, nowhere within W. Va. Code 8-10-2, 8-11-1, nor 8-12-5 does it state that a municipality has the legal authority to specify court needs or create specific court fees to be paid by individual defendants appearing before it to address needs.

Elkins Municipal Court prosecutes most of the criminal misdemeanor citations issued by the Elkins Police Department, including violations of city codes. In operating the court, the city employs one full-time court clerk and one part-time municipal judge. While the city views the court as an important asset, the actual costs of operating it far outweigh the revenues generated and retained. From July 2018 through June 2020, annual operating expenses of the Elkins Municipal Court—including personnel, office equipment and supplies, and hardware—have averaged around \$158,000. During that same period, court revenues averaged \$79,781.00 per fiscal year. As with the maintenance of court technology, excess court expenses are covered by the city’s general fund.

### II.C.3 Proposed Solution

The City of Elkins seeks authority to assess, by ordinance, a municipal court administrative fee to be determined by Elkins Common Council, of no more than \$65.00 for each person convicted within its municipal court. Based on an average of one-thousand four-hundred citations per year the court could

anticipate assessing \$91,000 annually in administrative court fines. However, recognizing that the city only collects about one-third of all assessed court fines, a practical projection of annual revenues is not more than \$30,000 a year, and this is only if council choose to impose the maximum fine of \$65.00. As with the municipal court technology and maintenance fee, this additional revenue will not cover the entire operational costs of the court, but it will help to lessen the burden on the city's general fund.

## II.D. Raising Maximum Age for Joining Civil Service Fire Departments

### II.D.1 Specific Legal Barrier

W. Va. Code §8-15-17(d) regarding fire department application, age and residency requirements and exceptions, stipulates that, unless an applicant to a West Virginia civil service fire department is an honorably discharged veteran of any branch of the United States armed forces, reserves, or National Guard; has served upon the same paid fire department within the previous year; or is presently employed by another paid fire department, they may be "no more than 35 years of age at the date of his or her application."

### II.D.2 Specific Problem Caused by Legal Barrier

The City of Elkins experienced an approximate two percent decrease in population over the last ten years, according to U.S. Census data. Fire departments all over the state are experiencing a reduction in applicants and correspondingly a reduction in the number of applicants who successfully navigate the rigorous multi-faceted hiring process. In 2020 the Elkins Firefighters Civil Service Commission conducted entry-level firefighter testing. Eleven applications were received. Of those eleven, five individuals made it to the list of eligible candidates. The department has since hired three of those applicants. None of these candidates had ever served with another department.

Of the twenty-four (24) paid or part-paid fire departments in West Virginia, fourteen are participants in the WV Municipal Police Officer and Firefighter Retirement System (MPFRS); most if not all the rest can be expected to join eventually. Having more participants in the MPFRS able to carry their retirement from one department to another will allow transfers between departments without loss of benefits. Because of this, more experienced firefighters may be expected to show interest in shifting from one department to another. The city would like to take advantage of the opportunity to hire experienced firefighters up to the age of forty (40), even if they have not served in a paid department within the previous year.

### II.D.3 Proposed Solution

Elkins seeks authority to enact an ordinance raising the maximum age at the time of application for entry-level civil-service fire positions, regardless of veteran status or previous or current paid fire service, from 35 to 40 years of age. This change would increase the pool of both novice and experienced applicants.



## Section III: Affidavits