



Charter Clarification

Office of Mayor (Section 3.01)

Introduction

This document explains a proposed clarification in Elkins Charter Section 3.01 (a), concerning the Office of Mayor.

The proposed change **does not have any effect on the actual authority of the Elkins Mayor**. That authority is established in a separate Charter section. Instead, the proposed change reduces the chance of confusion about the authority of the Elkins Mayor.

This change further ensures that there is no question whether our Charter accurately reflects the form of government chosen by Elkins voters in the 2021 municipal election.

Background

Not all city governments are structured the same way. Sometimes, Mayors have broad grants of executive authority, comparable to that of a president. Other times, Mayors have more specific authorities. This and other details of a city government's structure are spelled out in that city's Charter.

In West Virginia, a city's Charter will specify a plan, or form, of government structure for the given city. West Virginia Code (8-3-2) allows municipalities to choose from one of five "plans" for the structure of their city governments.

Since at least 1901, Elkins has been chartered under the Mayor-Council Plan ("Plan I"). In 2021, Elkins voters were asked to approve a ballot issue that would have adopted a new plan, the Manager-Mayor Plan ("Plan V" in WVC 8-3-2).

Voters *rejected* this amendment. Instead, a strong majority voted in favor of *keeping* the Mayor-Council Plan.

What is the Mayor-Council Plan?

Under the Mayor-Council Plan (the one Elkins follows), the mayor and council—acting *together*—are both the *governing* (i.e., lawmaking) and *administrative* (i.e., managerial and operating) authorities of the city.

In other words, under our current plan, the Elkins Mayor does not have broad, *unenumerated* (i.e., unlisted) administrative authority. Instead, he or she has various authorities *explicitly granted by Council* (via Council's duly adopted Charter, Code, rules, regulations, or orders) or by applicable state or federal law. (For example, under West Virginia law, all police departments are under the

direct supervision of the given city's Mayor, whether that is reflected in the city's local laws or not. This is an *enumerated* power.)

One of the other available forms of government under 8-3-2 is the Strong-Mayor Plan. This plan contrasts strongly with the Mayor-Council Plan, in that the Strong-Mayor Plan states that the Mayor, *independently from Council*, holds full administrative authority over the city government.

Which plan is better? Many people may answer that question in different ways. But whatever the advantages or disadvantages of the Mayor-Council Plan may be, the fact is that *Elkins voters chose to retain this form of government at the 2021 election*. The will of the voters should be respected.

What is the Proposed Change?

As explained above, the Elkins charter selects the Mayor-Council Plan of government. However, in Charter Section 3.01(a), there is some language that typically occurs in charters implementing the very different Strong-Mayor Plan (see highlighting below).

This is the language that the charter change seeks to clarify.

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** to carry out the functions of the office.

The ordinance would amend this paragraph as follows:

The Mayor shall be recognized as the chief executive officer and head of government of the City. The Mayor shall exercise ~~all only those~~ powers and perform ~~all only those~~ duties vested in or imposed by this Charter, ordinance, general law, or ~~other rule or order of Council necessarily implied therefrom, to carry out the functions of the office.~~ The mayor shall have only such additional powers and perform such additional duties as may be prescribed for mayors and other chief executive officers of municipalities by provisions of city, state, or federal law that are applicable to Mayors of municipalities chartered under the Mayor-Council Plan.

If this change wouldn't alter the Mayor's authority, why is it needed?

Whether this change is made or not, it is clear that Elkins Mayors must comply with the plan of government chosen by the Charter, in which their duties and authorities are *enumerated* (i.e., listed or specified). The problem is that, unless we change the charter, future Mayors, Councilors, and the public may experience confusion about the role of the Elkins Mayor.

Although "implied" authority is obviously consistent with the Strong-Mayor Plan, it is also obviously inconsistent with the Mayor-Council Plan. Under a plan in which the Mayor's authority is supposed to flow only from Council, he or she cannot also have "implied" (i.e., unenumerated or unlisted) powers. This is basically the difference between the Strong-Mayor and Mayor-Council Plans; if not for this difference, *there would not need to be two different plans*.

The need to change this language is not simply theoretical. Not only could this language cause confusion for future mayors and city staff, but it might even one day be interpreted as a covert

attempt to institute a Strong-Mayor Plan behind the voters' backs. To be clear, there is absolutely no evidence that this was ever anyone's intent, but we should nonetheless take all deliberate action to eliminate even the possibility of such an interpretation.

Anyone who wants to pursue adoption of a Strong Mayor plan is of course free to do so, following the process required by law. But in the meantime, this wording may cause confusion for officials, staff, and the public—should be eliminated.

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