

CITY OF VIENNA

MUNICIPAL HOME RULE PILOT PROGRAM APPLICATION



Draft: April 2, 2014

City of Vienna

West Virginia Municipal Home Rule Pilot Program Application

SECTION I: APPLICANT INFORMATION

A. General Information

Name of Municipality: City of Vienna

Certifying Official: Randy Rapp Title: Mayor

Contact Person: Amy Roberts Title: City Auditor

Address: 609 29th Street

City, State, Zip: Vienna, West Virginia 26105

Telephone Number: (304) 295-4541 Fax Number: (304) 295-4138

E-Mail Address: amyroberts@vienna-wv.com

2010 Census Population: 10,749

B. Municipal Classification

Please identify municipal class/metro government: (Check one)

Class I Class II Class III Metro-Government

C. Category of Issues to be Addressed

Please identify areas to be addressed through home rule: (Check all that apply)

Taxing Organization Administrative Personnel

(Please describe-attach additional pages if necessary):

Please see attached.

C. Category of Issues

1. "Eyesores" and Dilapidated Structures (Administrative) - Make needed repairs to "eye sores", dilapidated structures/property and sidewalks with the cost of repairs becoming a lien on the property.
2. Building and Zoning Administration Enforcement Provisions (Administrative) - Permit zoning and building administrators and/or City law enforcement officers to issue "on the spot" citations for exterior sanitation/common nuisance violations.
3. Disposition of City Property (Administrative) - Allow conveyance or lease of buildings or land to non-profit organizations providing services to the public that the City could otherwise provide.
4. Allow for Expedited Historical Significance Determination (Administrative) – Allow for an expedited Historical Significance Determination where the absence of historical significance may be determined from public records.
5. Allow Regulation of Vehicle Wreckers Operating within Municipal Boundaries (Administrative) – Allow for regulation of vehicle wreckers operating within municipal boundaries to require wreckers containing gasoline or other liquids to prevent discharge into storm drains.
6. Reduction of Certain Business and Occupation Taxes and Imposition of a 1% Municipal Sales Tax (Tax) – Allow for reduction or elimination of certain categories of business and occupation taxes currently imposed by the City and imposition of a 1% municipal sales tax.
7. Permit Purchases through Public Entity Cooperatives (Administrative) – Allow for cooperative purchasing arrangements, and satisfaction of competitive bidding requirements, by and among multiple municipalities, political subdivisions and/or public corporations, as well as their respective agencies and departments.

CITY OF VIENNA

MUNICIPAL HOME RULE PLAN

The following proposed Municipal Home Rule Plan lists additional powers for the City of Vienna (the "City") which will, if approved, enhance and improve the ability of the City to meet its present and future financial and civic service obligations. Provided the City is granted these additional powers, it will have the opportunity to improve its management, provision of services and the quality of life of its citizenry, and will further promote growth and prestige of our state.

THE PLAN. Pursuant to W. Va. Code § 5a, Article 1, Chapter 8, the City hereby proposes the following Municipal Home Rule plan:

1. "Eyesores" and Dilapidated Structures. (Administrative) Current state law, W.Va. Code § 8-12-16, only permits municipalities to "adopt ordinances regulating the repair, alteration, or the vacating and closing or removal or demolition of any dwellings or other buildings unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditionswhich would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare." This does not allow municipalities to address problems with property maintenance that detract from the neighborhood or constitute eyesores but do not yet constitute a threat to public safety. Additionally, West Virginia Code § 8-12-16 limits the lien amounts municipalities may assess for repairing or demolishing a structure to the assessed value of the property and requires that the City obtain a court judgment for the imposition of the lien.

Thus, it is proposed that the City be given the power and authority, after due notice to the owner or owners of property which is not being properly maintained, to enter the property and to maintain, repair or demolish the property, and/or to mow or trim unkempt grass, brush or trees to ensure that the property does not detract from the neighborhood and deteriorate further. The cost of that rehabilitation would constitute a lien against the property without the necessity of obtaining a court order.

2. Building and Zoning Administration Enforcement Provisions. (Administrative) Presently, there is no clear authority under state law that would permit building and zoning administrators or City law enforcement officers to issue "on the spot" citations for external sanitation violations or common nuisances. Additionally, W.Va. Code § 8-12-16 mandates certain

procedural and notice requirements including a requirement that, "[a]ll 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 a requirement that such orders "be posted in a conspicuous place on the premises affected by the complaint or order . . ." Further, W.Va. Code § 8-12-16(d) currently mandates that "no ordinance shall be adopted without providing therein for the right to apply to the circuit court for a temporary injunction restraining the enforcement agency pending final disposition of the cause." Currently, building and zoning administrators issue citations only after application to and approval by the Municipal Court. The process of successfully prosecuting a building or zoning violation may take a month, or more, and fosters recidivism from violators who will correct violations to get a case dismissed, then re-offend, knowing the prosecution clock will start anew. It is proposed that building and zoning administrators and/or City law enforcement officers be given power to issue citations for reoccurring exterior sanitation/common nuisance violations (including, but not limited to, trash/rubbish, overgrown weeds/grass, junked or otherwise unlawfully situated motor vehicles, maintenance of vacant structures, broken windows or glass, failure to maintain sidewalks and driveways) at the site of the violation and at the time the violation is recognized, similar to the manner in which traffic citations are issued.

3. Disposition of City Property. (Administrative) Under § 8-12-18 of the W.Va. Code, the City must convey or lease for fair market value, buildings or land to non-profit organizations providing services that benefit the citizens of the City. Such sale may create a financial burden for the non-profit, and by leasing such property to these organizations, the City retains liability inherent therein. It is proposed that the City be allowed to lease or convey (without auction) for less than fair market value buildings and land to non-profit organizations with a section 501(c)3 determination which are providing services to the public, that, in their absence, the City itself might have to provide, finance or administer; provided that a test similar to that imposed by W.Va. Code § 1-5-3 is met and that ownership of the land or building would revert to the City in the event the non-profit ceased to provide such services to the public consistent with § 8-32-1 or no longer qualified under section 501(c)3 of the Code of the Internal Revenue Service.

Additionally, W.Va. Code § 8-12-18(b) mandates that municipalities hold public auctions for the sale of all real and personal property worth in excess of one thousand dollars (\$1,000.00) and announce such auction in a Class II legal advertisement. When the primary purpose is to facilitate economic development within the City and/or the availability of necessary or convenient

resources for the benefit of its citizenry, the City proposes that it be permitted to convey real and/or personal property with a value in excess of one thousand dollars (\$1,000.00) for fair market value without having to follow the auction procedures outlined in W.Va. Code § 8-12-18(b). This would avoid costly and time consuming auction procedures and the possibility that the City would be precluded from conveying property for the desired use in a situation where the primary goal is to facilitate economic growth and/or to make available necessary and convenient resources for the benefit of the City and its residents.

4. Allow for Expedited Historical Significance Determination. (Administrative) Under W. Va. Code § 29-1-8a(c)(1), no person may excavate, remove, destroy or otherwise disturb any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance unless such person has a valid permit issued to him or her by the Director of the Historic Preservation Section. The rules (W. Va. Code R. § 82-3 et. seq) and requirements under this section are expansive and have resulted in a bottleneck in the permitting process for new construction sites. Therefore, the City proposes an expedited method of historical significance determination, which is administered by the municipality and based on evidence in the public records that establishes the historical significance, or lack thereof, for a particular site within the municipal boundaries. Under this proposal, if a particular site is found to be of any historical significance, or potentially of historical significance, the project will be referred to the Historic Preservation Section; however, if a particular site is found to be of no historical significance, the site will receive an expedited permit from the municipality, which is valid for purposes of W. Va. Code § 29-1-8a(c)(1). Not only will this provision establish a streamlined permitting process, it will also foster greater ownership and accountability for historic preservation within the municipality.

5. Allow Regulation of Vehicle Wreckers Operating within Municipal Boundaries to Require to Require Wreckers Containing Gasoline or Other Liquids to Prevent Discharge Into Storm Drains. (Administrative) Under Home Rule Powers of § 8-12-2(a)(5), the municipality is responsible for the acquisition, care, management and use of the city's streets, avenues, roads, alleys, ways, and property. Implicit in that duty is the responsibility to ensure that roadways are clear of debris caused by motor vehicle accidents. However, it is often the case that the municipality is not notified of an accident when it occurs, because parties chose to mutually resolve the incident. The services of a wrecker company can cause debris to remain on the roadway for an

extended period of time. W. Va. Code § 24A-1-1 delegates authority to regulate motor carriers, which includes “wreckers” or “towing” companies, to the Public Utility Commission (PSC). Current PSC regulations do not require wrecking companies to cleanup spills of liquids caused by an automobile accident. However, cleanup costs for such accidents and damage caused to the roadways by spills that remain unclean impose significant costs on the municipality. A municipality may petition the PSC for relief from harm caused by a wrecking company, but this process requires a significant expenditure of municipal resources. Therefore, the City proposes the establishment of an ordinance which requires all wreckers or towing companies, operating within the municipal boundaries, to maintain containment equipment for non-hazardous spills for the purpose of cleaning accident debris from the municipal roadways. The ordinance would require a wrecking company called to an accident scene to clean debris left on the roadway. The ordinance would also allow the wrecking company to pass the cost of this service to the customer.

6. Reduction of Certain Business and Occupation Taxes and Imposition of a 1% Municipal Sales Tax. (Tax) The City of Vienna proposes to impose a one percent (1%) municipal sales tax which will, among other purposes:

1. Generate new revenue to contribute additional funds to reduce the City’s unfunded liabilities under its policemen’s pension plan;
2. Provide funds for needed infrastructure improvements and capital expenditures in the City; and/or
3. Provide funds to assist with economic development projects and programs to businesses which will help grow the City’s tax base and create jobs.

West Virginia law currently limits the types of taxes a municipality may impose and the rates those taxes may be imposed. The taxes a municipality may impose are limited to those specified in W.Va. Code 8-13-1 et seq. and W.Va. Code 8-13C-1 et seq. The primary business tax imposed by The City of Vienna is the business and occupation tax, in effect prior to July 1, 1987. State law specifies the classifications of business activities upon which the City may impose its business and occupation tax and specifies the maximum rates that may be levied which, except in a couple of instances, are the primary State tax rate for those classifications in effect of January 1, 1959. Not all business activities were subject to the State business and occupation tax. Consequently, not all

business activities engaged in within the City are subject to the City's business and occupation tax.

In 2004, the Legislature enacted W.Va. Code 8-13C-1-et seq., which allows municipalities to impose a one percent sales and use tax provided they repeal their business and occupation tax. In the case of the City of Vienna, the amount of taxes received by eliminating B&O tax and implementing a sales tax would allow the city a minimal if any revenue increase. The City of Vienna is in need of additional revenues not alternative taxes that maintain the status quo.

As required by West Virginia Code 8-1-5a (k) (6), in conjunction with the City's request for authority to impose a one percent (1%) municipal sales tax, the City proposes to reduce the rate of its business and occupation tax under the retail classification from .50% to .40% which will result in a reduction in taxes of approximately \$450,000 per year. Additionally, the City is proposing to eliminate the business and occupation taxes on manufacturing which will result in a further reduction in taxes of \$1,000 per year. The total reduction in business and occupation taxes is estimated at \$451,000 annually. Estimated annual revenues to be generated from a one percent (1%) sales tax are \$3,273,370 (this does not include sales tax on services as provided by State law). This increase will be offset by an estimated annual reduction of \$451,000 in business and occupation tax.

The City's sales tax will be administrated, collected, and enforced by the State Tax Department. The State and City sales tax base will be identical. Therefore, a transaction exempt from State sales tax will also be exempt from City sales tax.

The current financial resources available to the City of Vienna, West Virginia are not adequate to meet anticipated long term expenses of the City. The City has few other options available to meet its revenue needs. The City has determined that the best option available is to impose a sales tax at the one (1%) rate and reduce business & occupation tax on its retail classification and eliminate the manufacturing classification, with the goal of increasing economic development.

Projection of Annual Sales Tax Revenues

2011-2012 Retail Sales** (Retail collections 2,236,685 divided by .50%)	\$447,337,000.00
Revenue to be generated for 1% Sales Tax Before reduction for exemptions	4,473,370.00
Less: Exemption for sales not subject to tax (i.e.: Gasoline, Groceries, Prescription Drugs, Auto Sales)	<u>(1,200,000.00)</u>
Estimated Annual 1% Sales Tax Revenues**	3,273,370.00
Less: Amount lost to reducing B&O Tax rate	<u>(451,000.00)</u>
Estimated Net Increase to City Revenues	<u>2,822,370.00</u>

** The estimate does not include estimated revenues from sales tax to be collected on services which are subject to the sales tax under state statute.

7. Permit Purchases through Public Entity Cooperatives. (Administrative) Presently, West Virginia Code contains a number of sections which place requirements on the procurement of personal property by the City and its agencies and departments, such as minimum amounts above which competitive bids are required. See W. Va. Code § 16-13-3. The City believes that, by aggregating the fungible material needs of several municipalities, political subdivisions and/or public corporations (and their agencies and departments), all public entities may receive superior pricing than if they proceeded alone. Fire hydrants are an example of a piece of personal property which could be bid cooperatively. State law does not, however, provide an express mechanism for such a cooperative purchasing arrangement nor expressly provide that such a purchasing arrangement satisfies the competitive bidding requirements of the various statutes.

Accordingly, the City proposes that such cooperative bidding arrangements for personal property with other municipalities, political subdivisions and/or public corporations (and their agencies and departments) be expressly permitted and that such bidding arrangements satisfy the competitive bidding requirements of any and all applicable statutes.