

City  
of  
New Martinsville

Municipal  
Home Rule  
Application



**CITY OF NEW MARTINSVILLE**  
MUNICIPAL BUILDING  
191 MAIN STREET  
NEW MARTINSVILLE, WEST VIRGINIA 26155

(304) 455-9120  
FAX (304) 455-9123

Where The Rail & River Meet

October 4, 2019

Department of Revenue

Building 1, W-300

Charleston, WV 25305

Thank you for considering the City of New Martinsville's Municipal Home Rule application. Our city government has observed the initial Home Rule Cities with great interest. We strive for community participation and believe we are prepared to implement the proposed plan to better our city.

By becoming a part of the West Virginia Home Rule Program, New Martinsville will be able to address the issues stated in the application. The decreased B&O tax will lessen the burden on the businesses, while the proposed 1% sales and use tax will greatly increase our annual revenue. This plan allows us to address the cities dilapidated properties, as well as, hire special police officers when needed.

Participation in the Home Rule Program will allow the City of New Martinsville to be more responsive to the needs of our community. Approval of this plan will ensure that the City of New Martinsville can continue improving the services and quality of life provided to its residents.

Thank you again for your consideration, as well as, all your help and guidance with our application.

Sincerely,

Kim Whiteman

City Recorder

## HOME RULE APPLICATION, PLAN AND AMENDMENT CHECKLIST

- Class II legal advertisement of Public Hearing
- Dates June 5, 2019 & June 12, 2019
- Notice of Public Hearing to Municipal Home Rule Board (MHRB) and Cabinet Secretary of every State department
- Plan available for public inspection 30 days prior to Public Hearing
- Hearing
- Date July 17, 2019
- Ordinance authorizing plan or amendment
- 1<sup>st</sup> reading date July 17, 2019
- 2<sup>nd</sup> reading date August 5, 2019
- Date of adoption August 5, 2019
- Required narrative presentation of each separate proposal (see Sample Form Application)
- ATTACHMENTS**
- Affidavit of legal notice of Public Hearing
- Minutes of Public Hearing, including comments (if any)
- Certified copy of ordinance authorizing plan or amendment
- Fiscal statement demonstrating municipality's ability to manage costs or liabilities associated with proposals
- Affidavit that municipality owes no outstanding State fees
- Attorney opinion letter that application and plan or amendment complies with applicable State law
- Submit eight (8) originals and one (1) electronic copy of application plan or amendment to the MHRB

# MUNICIPAL SALES AND USE TAX CHECKLIST

Name of Municipality: City of New Martinsville

Mailing address: 191 Main Street, New Martinsville, WV 26155

## Name of contact and contact information

Name: Kim Whiteman, City Recorder

Mailing address: 191 Main Street, New Martinsville, WV 26155

Telephone number: 304-455-9122

Email address: kwhiteman@newmartinsville.com

## Municipal Sales and Use Tax Ordinance

1. Was a draft of the sales and use tax ordinance submitted to the Tax Commissioner for review prior to first reading? Yes:  No:

If the Department requested changes, were the changes made? Yes:  No:

If no, please explain:

2. Date the governing body read the proposed sales and use tax ordinance a first time. July 17, 2019

3. Date of the public hearing prior to second reading required by W. Va. Code § 8-11-4(a)(2). July 17, 2019

4. Did the governing body adopt any amendments to the municipal sales and use tax ordinance?

Yes:  No:

If yes, please **briefly** describe the amendments:

5. Date the municipal sales and use tax ordinance was adopted. August 5, 2019
6. What is the effective date of the municipal sales and use tax ordinance? July 1, 2020
7. What is the internal effective date for imposition and collection of the municipal sales and use tax? July 1, 2020
8. Did your municipality impose a business and occupation tax (B&O tax): Yes:  No:
- a. Non-Home Rule Municipalities: Was the business and occupation tax eliminated as required by W. Va. Code § 8-13C-4(b) before the municipal sales and use tax ordinance was adopted?  
Yes:  No:
- b. Home Rule Municipalities: Was the municipal B & O tax reduced as described in the municipal home rule plan, or plan amendment, approved by the Municipal Home Rule Board?  
Yes:  No:
9. Has a map of the corporate boundaries of the municipality been provided to the State Tax Department? Yes:  No:
10. Has the municipality furnished the State Tax Department with the municipality's database in an Excel file. Yes:  No:
11. Has the municipality furnished the State Tax Department with the name of the municipal employee, and his or her contact information, to contact regarding municipal sales and use taxes. Yes:  No:

**\*\*\* Please provide a certified copy of the municipal sales and use tax ordinance adopted by the governing body of the municipality with this form.\*\*\***  
**\*\*\*If 8 above is answered yes, please provide a certified copy of the ordinance adopted by the governing body of the municipality eliminating or reducing the B & O tax with this form.\*\*\***

Name of Person Completing this form: Kim Whiteman

Date: October 1, 2019

**CITY OF NEW MARTINSVILLE  
MUNICIPAL HOME RULE  
APPLICATION CHECKLIST**

<b>SECTION I: APPLICANT INFORMATION</b>	
Page No.	
1	General Information
1	Municipal Classification
1	Specific Issues to be Addressed
1	Category of Issues to be Addressed

<b>SECTION II: NARRATIVE</b>	
Page No.	
2-13	Specific state laws, policies, acts, resolutions, rules or regulations that are preventing the municipality to carry out duties in the most cost effective, efficient and timely manner.
2-13	Specific problems created by the laws, policies, acts, resolutions, rules or regulations.
2-13	Proposed solutions to the perceived problems, including all proposed changes to law, policies, acts, resolutions, rules or regulations.

<b>SECTION III: APPENDICES</b>	
Page No.	
A1	Hearing Mandate Verification
A2	Publication Mandate Verification
A3	Ordinance Authorizing Submission of Plan
A4	Fiscal Impact Worksheet/Formula
A5	Attorney Opinion
A6	State of West Virginia Fees Statement
A7	Agreement to Requirements Statement
A8	Resolution for Public Hearing

# Narrative Presentation

## Section 1: Applicant Information

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

### 1.A. General Information

Municipality City of New Martinsville

Certifying official: Mayor Steven Bohrer

Contact Person: City Recorder Kim Whiteman

Address: 193 Main Street, New Martinsville, WV 26155

Telephone: 304-455-9120

Email: [kwhiteman@newmartinsville.com](mailto:kwhiteman@newmartinsville.com)

2010 census: 5042

### 1.B. Municipal Classification

Class I \_\_\_ Class II \_\_\_ Class III **X** Class IV \_\_\_

### I.C. Specific Issues to be addressed

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

- The inability of our code enforcement officer, building inspector, and /or city police to cite property owners “on the spot” for violations of city ordinances concerning property maintenance, safety, and health hazards.
- Inability to require lenders and trustees to register and maintain foreclosed properties
- Inability to place public-nuisance liens (for unpaid fines) against a property without a court order
- Inability to employ part-time, non-civil-service police officers for longer than three months
- Inability to hire police officers older than 40 years of age
- Delinquent Fees
- Online Sale or Disposition of Other Municipal Property
- Implementing a Municipal Sales and Use Tax of 1% along with B&O Tax reduction and incentives

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

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



## **Section II: Narrative**

The City of New Martinsville, the county seat of Wetzel County, is located along the Ohio River. The city has a rich history of boat racing and will celebrate its 200<sup>th</sup> birthday in 2038. New Martinsville has the quaint, small-town atmosphere, but faces many issues more typical of larger cities. In crafting its home-rule application, the city has sought to identify ordinances that could be modified to help solve some of the issues facing New Martinsville.

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

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

### **II.A. Authorities for Addressing Dilapidated Properties**

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

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

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

- The authority for our code enforcement officer, building inspector, and/or city police to cite property owners “on the spot” for violations of city ordinances concerning property maintenance, safety and health hazards.
- The authority to require lenders and trustees to register and maintain foreclosed properties.

- The authority to place public-nuisance liens (for unpaid fines) against a property without a court order.
- The authority to require that someone buying a property at tax-sale auctions must satisfy the city's demolition lien before securing title to the property.
- The authority to exercise a right of first refusal to purchase any delinquent-tax property inside city limits for taxes owed before the property is listed for sheriff's auction.
- The authority to sell without auction or lease city property at fair-market value to private purchasers in a manner that promotes economic development and/or the public good.
- The authority to sell without auction or lease city property at below-market value to 501 (c) 3 corporations.

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

### **II.A.1 "On the spot" citations**

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

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

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

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

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

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

### **II.1.b Specific Problem Caused by Legal Barrier**

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

#### **II.A.1.c. Proposed Solution**

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

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

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

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

##### **II.A.2.a. Specific Legal Barrier**

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

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

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

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

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

### **II.A.2.c. Proposed Solution**

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

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

### **II.A.3. Public Nuisance Liens**

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

#### **II.A.3.a Specific Legal Barrier**

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

#### **II.A.3.b. Specific problem Caused by Legal Barrier**

The city has the ability to repair, alter, or demolish property and/or mow overgrown grass, but is limited to sending a bill to the property owner to attempt to recoup the city's costs in taking such action. There is not only the financial aspect of an, often, unpaid bill, this action also reduces the perceived authority of the city's enforcement agents.

#### **II.A.3.c. Proposed Solution**

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

#### **II.A.4. Satisfaction of Demolition Liens**

In this subsection the City of New Martinsville explains why we seek authority to require anyone buying a property at a tax-sale auction to satisfy our demolition lien before securing title to the property.

##### **II.A.4.a Specific Legal Barrier**

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

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

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

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

IPMC subsection 110. 3 further provides that if the owner of the premises fails to comply with a demolition order within the time prescribed, the Code Official shall cause the structure to be demolished and removed, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

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

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

#### **II.A.4.c. Proposed Solution**

New Martinsville seeks authority to enact an ordinance requiring payment of any demolition lien due at the time of a delinquent -tax sale and before the certificate of sale is issued, in the same way that W.Va. Code 11A-3-14 currently stipulates, that, at such sales, "the sheriff shall require payment of any subsequent taxes due at the time of sale before a certificate of sale is issued." As a result, to prevail at such an auction, a bidder would have to offer the highest bid that pays not only (1) the amount of taxes, interest and charges for which the tax lien on any real estate is being offered for sale but also (2) the amount of the city's demolition lien.

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

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

##### **II.A.5.a Specific Legal Barrier**

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

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

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

All too often, such properties are purchased—sometimes in large volumes—by speculators with little concern for the health of the surrounding neighborhoods and/or no particular plans to effect improvements to any structure on said properties. By contrast, it would be in the public's clear interest to the city to be able to obtain these properties so that it could, for example, sell

or otherwise transfer them to a community housing development organization (see section II.A.7, below) for renovation/reconstruction as high-quality workforce housing, among other possible neighborhood revitalization scenarios. However, it would be a losing proposition to regularly compete with private bidders for such properties, as most cities would find themselves regularly outbid.

#### **II.A.5.c. Proposed Solution**

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

Under the proposed authority, New Martinsville would be given the first opportunity to purchase any property (especially including the properties against which the city has filed a demolition or other lien) within city limits for taxes owed. This would allow the deed, if the property is not redeemed, to be issued to the city, where, among other possibilities, and under authority sought in sections II.A.6 and II.A.7, below, the property could be sold directly to private or non-private entities proposing projects with clear public benefits. The time necessary for the city to decide whether to exercise this authority on any given for property owners to redeem property prior to its sale.

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

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

##### **II.A.6.a. Specific Legal Barrier**

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

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

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

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

#### **II.A.6.c. Proposed Solution**

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

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

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

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

- The authority to employ part-time, non-civil-service police officers
- The authority to raise the upper age limit for initial entry-level appointment to full-time civil-service officers from 40 to 45.
- The authority to eliminate requirements that political party membership be taken into account for appointments as election officials and to civil-service and building commissions.



### **II.B.1. Part-Time Police Officers**

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

#### **II.B.1.a. Specific Legal Barrier**

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

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

The City of New Martinsville Police Department is currently funded for ten sworn, civil-service positions (and one Chief). If New Martinsville were always able to field 10 officers throughout each week, this would still be a relatively light level of staffing for a city approximately 5200 people. As is the case with many other cities, New Martinsville is currently experiencing significant levels of crime.

Even when all ten civil-service positions are funded, it is often the case that New Martinsville is not able to field all 10 officers. Our salary and benefit offers are not able to compete with other law enforcement departments.

There is also a lag time between the appointment of a new officer and when they can respond to calls. They must graduate from the West Virginia Police Academy (a 16-week program) and complete a field-training period that is required of all new officers. During this time, although the positions are filled, the department does not actually have 10 independent officers.

This leaves the city dangerously understaffed. It forces the remaining officers to work extra long hours, risking mistakes caused by lack of rest, harming family relationships, and leading them to pursue other employment opportunities.

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

### **II.B.1.c. Proposed Solution**

New Martinsville seeks the authority to enact an ordinance that would expand its existing power, granted by W.Va. Code 8-14-16, to permit the non-competitive hiring of special (non-civil service) police officers to serve as needed for indefinite periods of time. This ordinance would not affect civil service status or protections for current or future full-time officers. New Martinsville would continue to fully adhere to all civil-service requirements of the West Virginia Code. The total number of part-time special officer positions would be limited to no more than 25 per cent of funded full-time civil-service positions in the police department. Special police officers would not be used to avoid the need to fill full-time civil-service vacancies and New Martinsville would continue to actively seek to fill all such vacancies. Part-time special officers would receive all training required of other officers (including successful completion of the academy's basic law enforcement course) and would be required to hold active West Virginia law enforcement certification. A percentage of the potential revenue to be collected from the implementation of the 1% Sales and Use Tax will be allocated to the City of New Martinsville Police Department. A portion of that percentage will specifically be used towards the hiring and training of these special police officers.

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

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

#### **II.B.2.a. Specific Legal Barrier**

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

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

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

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

The arbitrariness of this requirement is further demonstrated by the fact that it does not apply to sheriff's deputies, who are already allowed to be 45 years old at the time of the initial application (W.Va. Code 7-14-8). Because of this discrepancy, the sheriff's department often attracts veterans of city departments. The requirement is not merely arbitrary but starkly unfair.

### **II.B.2.c. Proposed Solution**

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

### **II.B.3. Party Membership Requirements for Appointed Election Officials and Civil Service and Building Commissions**

This subsection explains why the City of New Martinsville seeks the authority to eliminate political party membership requirements for appointments as election officials and to civil service and building commissions.

#### **II.B.3.a. Specific Legal Barrier**

W.Va. Code 3-1-29(a)3 and (b) states that (1)"no team of poll clerks or team of election commissioners shall consist of two persons with the same registered political party" and (2)"such officials are to be nominated by the county executive committees of the two major political parties."

W.Va. Code 3-3-5c provides that each pair of emergency absentee ballot commissioners at - large shall consist of "two persons with different political party affiliations," also to be nominated by "the county executive committees of the two major political parties."

W.Va. Code 3-1-19(a)2A&B provide that the two citizen members of a Board of a Ballot Commissioners shall be appointed by the county executive committees of the two political parties whose members cast the largest and second-largest number of votes in the last preceding general election.

W.Va. Code 8-15-12 and 8-14-7 provide that not more than two members of either a firefighters or police civil-service commission may be "adherents of the same political party."

W.Va. Code 8-33-3 provides that "no more than two thirds of the total number of members of the board of each [building] commission shall be from the same political party."

### **II.B.3.b. Specific Problem Caused by the Legal Barrier**

Imposing party-membership requirements needlessly restricts the pool of available candidates. Political party-membership does not affect the suitability for service in any of the above capacities. The best candidate might not be chosen because of this arbitrary requirement.

### **II.B.3.c Proposed Solution**

New Martinsville seeks authority to enact ordinances eliminating all the party-membership requirements listed in II.B.3.a. Having eliminated party membership requirements for election officials, it would make no sense to require that they be nominated by political party executive committees. New Martinsville also seeks to enact an ordinance eliminating the latter requirement. These changes would allow New Martinsville to make selections for all of these positions based entirely on qualifications.

City of New Martinsville  
Home Rule Application

**PROPOSED SALES AND USE TAX IMPLEMENTATION**  
**AND**  
**PROPOSED B&O TAX REDUCTION**

With the imposition of a one percent (1%) sales and use tax, the City of New Martinsville could realize an estimated proposed revenue of approximately \$1,951,757.81.

As required by West Virginia Code 8-1-5a(i)(14), in conjunction with the City of New Martinsville's request for authority to impose said sales tax, the City is proposing to reduce the rate of its current Business and Occupation Tax in manufacturing, lime/sandstone (quarried or mined) and selling retailers. The manufacturing rate would decrease from 0.15% to 0.10% resulting in an estimated \$6,270.00 reduction. The lime/sandstone rate would decrease 0.50% to 0.45% resulting in an estimated \$894.00 reduction. The selling retailers current B&O rate would decrease from 0.25% to 0.20 % resulting in an estimated \$99,092.00 reduction in the amount collected. The estimated total amount of decreased B&O Tax collected would be approximately \$106,257.00 due to the reduced rates. While the gross proceeds from the B&O Tax will decrease as a result of this plan, the substantial increase in revenue resulting from the proposed 1% Sales and Use Tax implementation will more than make up the that loss.

**Notice of  
Public Hearing  
to  
MHRB  
and  
Cabinet Secretaries**



Where The Rail & River Meet

**CITY OF NEW MARTINSVILLE**  
MUNICIPAL BUILDING  
191 MAIN STREET  
NEW MARTINSVILLE, WEST VIRGINIA 26155

(304) 455-9120  
FAX (304) 455-9123

A1

Dale W. Steager  
West Virginia Tax Commissioner  
1001 Lee Street East  
Charleston, WV 25301

Dear Mr. Steager,

Enclosed please find the following; Legal Ad placed in the Wetzel Chronicle, Ordinance, Estimated Proposed Sales and Use Tax, as well as, Proposed Sales and Use Tax implementation and Proposed B&O Tax Reduction.

Please do not hesitate to contact me at the number above if you should have questions or comments.

Sincerely,

Kim Whiteman  
City Recorder

**Publication Mandate  
Verification  
& Affidavit Class II  
Legal Advertisement  
of Public Hearing**



TO ALL RESIDENTS, FIRMS AND CORPORATIONS OF THE CITY OF NEW  
MARTINSVILLE, WEST VIRGINIA

Please take notice that the City of New Martinsville, West Virginia, intends to submit an application to participate in the West Virginia Municipal Home Rule Program, pursuant to the Provisions of the W.Va. Code 8-1-5a. Said application requests permission for the City of New Martinsville to be granted authority to broadly increase its governing powers as set forth in the said W.Va. Code provisions, and for the particular areas and items set forth in the City's said application. A copy of the application is available for public inspection during open office hours at the New Martinsville City Building, 191 Main Street, New Martinsville, WV 26155.

The Home Rule application shall be subject to a public hearing on Wednesday, July 17, 2019, at 7:00 p.m. at the Council Chambers, New Martinsville City Building, 191 Main Street, New Martinsville, WV 26155, and an ordinance authorizing the said application's submission to the West Virginia Municipal Home Rule Board shall be considered by New Martinsville Council for adoption on July 22, 2019 and August 5, 2019 in the Council Chambers at New Martinsville City Building, 191 Main Street, New Martinsville, WV 26155 after said public hearing. Any interested person may appear to be heard at said public hearing.

Kim Whiteman

City Recorder

# WETZEL CHRONICLE

New Martinsville, WV ..... June 12 ..... 2019

State of West Virginia, County of Wetzel:

Personally appeared before the undersigned, a Notary Public,

\_\_\_\_\_ Eric Anderson \_\_\_\_\_ who, being duly sworn,

states that he is the manager of the Wetzel Chronicle, a weekly newspaper of general circulation, published at New Martinsville,

County of Wetzel, State of West Virginia, and that a copy of the

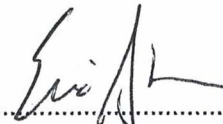
notice attached hereto was published for..... 2 ..... successive

weeks in the Wetzel Chronicle, beginning on the ..... 5 ..... day

of ..... June ..... 2019 and ending on the..... 12 ..... day

of ..... June ..... 2019.

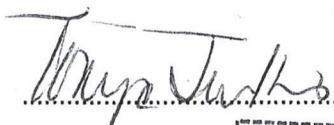
*1-440-40-x-20*



\_\_\_\_\_  
Manager, Wetzel Chronicle

Subscribed and sworn to before me, a Notary Public of said

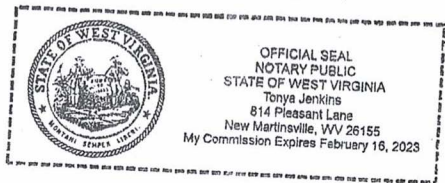
County, on this ..... 12 ..... day of ..... June ..... 2019.



..... Notary Public

My commission expires

Printers Fee.....



<b>Legal Notices</b>	<b>Legal Notices</b>
<b>TO ALL RESIDENTS, FIRMS AND CORPORATIONS OF THE CITY OF NEW MARTINSVILLE, WEST VIRGINIA</b>	
<p>Please take notice that the City of New Martinsville, West Virginia, intends to submit an application to participate in the West Virginia Municipal Home Rule Program, pursuant to the Provisions of the W.Va. Code 8-1-5a. Said application requests permission for the City of New Martinsville to be granted authority to broadly increase its governing powers as set forth in the said W.Va. Code provisions, and for the particular areas and items set forth in the City's said application. A copy of the application is available for public inspection during open office hours at the New Martinsville City Building, 191 Main Street, New Martinsville, WV 26155.</p> <p>The Home Rule application shall be subject to a public hearing on Wednesday, July 17, 2019, at 7:00 p.m. at the Council Chambers, New Martinsville City Building, 191 Main Street, New Martinsville, WV 26155, and an ordinance authorizing the said application's submission to the West Virginia Municipal Home Rule Board shall be considered by New Martinsville Council for adoption on July 22, 2019 and August 5, 2019 in the Council Chambers at New Martinsville City Building, 191 Main Street, New Martinsville, WV 26155 after said public hearing. Any interested person may appear to be heard at said public hearing.</p> <p>Kim Whiteman City Recorder WC 6/5 6/12 14166</p>	

# Wetzel Chronicle

## LEGAL ADVERTISING INVOICE

Please remit with  
**ONE COPY** of Invoice to:  
 Wetzel Chronicle  
 P.O. Box 289  
 New Martinsville, WV 26155  
 Phone: 304-455-3300

\* City of New Martinsville \*  
 191 Main Street  
 New Martinsville, WV 26155 \*

Please Pay This Amount

\$ 56.45

Billing Date: 6/12/19		Ref. # 14166		Acct. # L00102		Vendor #	
RUN DATE	DESCRIPTION	RATE	SPACE	AMOUNT			
6/5/19	Municipal Home	Lines	Inches				
6/12/19	Rule Program	33	3.21	56.45			

# Ordinance

## ORDINANCE OF THE CITY OF NEW MARTINSVILLE

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

The Common Council of the City of New Martinsville duly adopted a resolution on June 3, 2019 scheduling a public hearing on the City of New Martinsville Municipal Home Rule Application for July 17, 2019.

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

The City Recorder caused to be published the Notice of Proposed Enactment of the Proposed Ordinance as a Class II Legal Ad on June 5, 2019 and June 12, 2019 in *The Wetzel Chronicle* newspaper, as required by law.

A copy of the written plan and application has been available to the public and may be inspected by the public at the office of the City Recorder, 191 Main Street, New Martinsville, West Virginia.

On July 17, 2019 at 7:00 p.m. in the New Martinsville City Council Chambers, 191 Main Street, New Martinsville, West Virginia, the Common Council conducted a public hearing during which interested parties had the opportunity to appear and their comments be heard and considered.

The Ordinance was presented to, and passed on first reading by, Council after the public hearing on July 17, 2019.

The Ordinance was presented to, and passed on second reading, by Council on August 5, 2019.

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

With the imposition of a one percent (1%) sales and use tax, the City of New Martinsville could realize an estimated proposed revenue of approximately \$1,951,757.81.

As required by West Virginia Code §8-1-5a(i)(14), in conjunction with the City of New Martinsville’s request for authority to impose said sales tax the city is proposing to reduce the rate of its current Business and Occupation Tax in manufacturing, lime/sandstone (quarried or mined) and selling retailers. The manufacturing rate would decrease from 0.15% to 0.10% resulting in an estimated \$6,270.00 reduction. The lime/sandstone rate would decrease 0.50% to 0.45% resulting in an estimated \$894.00 reduction. The selling retailers current B&O rate would decrease from 0.25% to 0.20% resulting in an estimated \$99,092.00 reduction in the amount collected. The estimate total amount of decreased B&O Tax collected would be approximately \$106,257.00 due to the reduced rates.

This Ordinance shall become effective upon passage.


**PASSED AND APPROVED ON FIRST READING: JULY 17, 2019.**

**PASSED AND APPROVED ON FINAL READING: AUGUST 5, 2019.**

CITY OF NEW MARTINSVILLE, WEST VIRGINIA

  
\_\_\_\_\_  
Steven A. Bohrer, Mayor

Attest:

  
\_\_\_\_\_  
Kim Whiteman, City Recorder

# Fiscal Statement



Fiscal Impact Worksheets and Formulas  
New Sales Tax and Business and Occupation Tax Restructuring

In the proposed Home Rule plan for the City of New Martinsville, Business and Occupation (B&O) Taxes would be reduced by .05% in three categories. An additional 1% Sales and Use Tax would be implemented on those categories currently affected by the 6% WV State Sales and Use Tax.

Current B&O Tax Revenue	
Business Category	Actual B&O FY18
Manufacturing	\$ 18,810.85
Lime/Sandstone	\$ 8,949.21
Selling Retailers	\$ 495,463.36
Wholesalers	\$ 12,051.94
EL&P Domestic*	\$ 92,140.26
EL&P Others*	\$ 32,280.84
Natural Gas	\$ 68,153.10
Contracting	\$ 68,237.20
Amusement	\$ 817.81
Services or Calling	\$ 232,637.70
Rentals/Royalties	\$ 145,412.46
Banking/Financial	\$ 29,280.29
<b>Total for Year</b>	<b>\$ 1,204,235.02</b>

Proposed B&O+Sales Tax Revenue			
Business Category	Status	B&O Est.	Sales Tax Est.
Manufacturing	1	\$ 12,540.56	
Lime/Sandstone	1	\$ 8,054.29	\$ 17,898.41
Selling Retailers	1	\$ 396,370.69	\$ 1,981,853.44
Wholesalers	2	\$ 12,051.94	
EL&P Domestic*	2	\$ 92,140.26	
EL&P Others*	2	\$ 32,280.84	
Natural Gas	2	\$ 68,153.10	
Contracting	2	\$ 68,237.20	
Amusement	2	\$ 817.81	
Services or Calling	2	\$ 232,637.70	
Rentals/Royalties	2	\$ 145,412.46	
Banking/Financial	2	\$ 29,280.29	
<b>Estimate for Year</b>		<b>\$ 1,097,977.14</b>	<b>\$ 1,999,751.85</b>

\* Electric Light and Power

Status Codes	
1	Category to be Reduced B&O
2	Category to be Exempt from Sales Tax

<b>Total New Business Tax Collection (est.)</b>	<b>\$ 3,097,728.99</b>
<b>Difference from FY 2018 Collection</b>	<b>\$ 1,893,493.97</b>

**City of New Martinsville  
Home Rule Committee  
1% Sales Tax Summary**

B&O Category	FY 2018 Gross	Exempt	Currant		Proposed			FY 2018 Retail	Estimated
			Rate	B&O Tax	Rate	B&O Tax	B&O Reduction	Gross Less Exemptions	Proposed Sales & Use Tax 1%
Manufacturing	\$ 12,540,563.42	\$ -	0.15%	\$ 18,810.85	0.10%	\$ 12,540.56	\$ (6,270.28)		
Lime/Sandstone, Quarried or Mined	\$ 1,789,841.25	\$ -	0.50%	\$ 8,949.21	0.45%	\$ 8,054.29	\$ (894.92)	\$ 1,789,841.25	17,898.41
Selling Retailers	\$ 204,626,307.20	\$ 6,440,963.68	0.25%	\$ 495,463.36	0.20%	\$ 396,370.69	\$ (99,092.67)	198,185,343.52	1,981,853.44
Wholesalers	\$ 15,141,610.60	\$ 76,683.97	0.08%	\$ 12,051.94	0.08%	\$ 12,051.94	\$ -		
Electric Light & Power Sales & Demand, Domestic &	\$ 2,303,506.52	\$ -	4.00%	\$ 92,140.26	4.00%	\$ 92,140.26	\$ -		
Electric Light & Power All Other Sales & Demand	\$ 1,076,027.96	\$ -	3.00%	\$ 32,280.84	3.00%	\$ 32,280.84	\$ -		
Natural Gas Companies	\$ 2,271,769.84	\$ -	3.00%	\$ 68,153.10	3.00%	\$ 68,153.10	\$ -		
Contracting	\$ 6,828,880.24	\$ 5,160.00	1.00%	\$ 68,237.20	1.00%	\$ 68,237.20	\$ -		
Amusement	\$ 327,123.40	\$ -	0.25%	\$ 817.81	0.25%	\$ 817.81	\$ -		
Services or Calling & All Other Businesses	\$ 46,615,551.55	\$ 88,010.74	0.50%	\$ 232,637.70	0.50%	\$ 232,637.70	\$ -		
Rentals, Royalties, Fees Or Otherwise	\$ 29,184,021.15	\$ 101,529.25	0.50%	\$ 145,412.46	0.50%	\$ 145,412.46	\$ -		
Banking and Other Financial Institutions	\$ 8,229,952.17	\$ 2,373,894.44	0.50%	\$ 29,280.29	0.50%	\$ 29,280.29	\$ -		
<b>Totals:</b>	<b>\$ 330,935,155.30</b>	<b>\$ 9,086,242.08</b>		<b>\$ 1,204,235.01</b>		<b>\$ 1,097,977.14</b>	<b>\$ (106,257.87)</b>		<b>\$ 1,999,751.85</b>
								Admin Fee 2.4%	<b>\$ 47,994.04</b>
								Proposed Estimated Sales & Use Tax Revenue	<b>\$ 1,951,757.81</b>
<b>Total B&amp;O Revenue:</b>	<b>\$ 1,204,235.01</b>								

# Attorney Opinion

**SNYDER & HASSIG**

ATTORNEYS AT LAW

233 MAIN STREET

POST OFFICE BOX 189

NEW MARTINSVILLE, W. VA. 26155-0189

LOGAN HASSIG  
CAROLYN G. FLANNERY \*  
PHILIP J. BOWSERELMER EARL BOWSER, JR.  
OF COUNSEL

\* ALSO ADMITTED IN OHIO

TELEPHONE  
(304) 455-2180TELECOPIER  
(304) 455-1514

August 26, 2019

Municipal Home Rule Board  
West Virginia Development Office  
State Capitol Complex  
Building 6, Room 553  
Charleston, WV 25305-0311**CITY ATTORNEY OPINION LETTER**Re: City of New Martinsville, West Virginia  
Municipal Home Rule Program Application

Dear Members of the Board:

I am the City Attorney for the City of New Martinsville, West Virginia. I have reviewed various public records and documents provided to me by the City of New Martinsville and I have examined the provisions of West Virginia Code §8-1-5a (the "Act"), concerning the West Virginia Municipal Home Rule Program. I have been requested to render an opinion stating that the Application to be filed by the City of New Martinsville complies with the requirements set forth in the Act.

As to questions of fact material to my opinion, I have relied upon the public records and documents provided to me by or on behalf of the City of New Martinsville, without undertaking to verify the same by independent investigation. This opinion is rendered subject to the accuracy, completeness, and regularity of said public records and documents, the constitutionality of the legislation set forth in West Virginia Code §8-1-5a, and to any limitations provided by public policy or the exercise of judicial discretion in appropriate cases in regard thereto.

The City of New Martinsville is a Class III municipal government and is current in the payment of all state fees. The City of New Martinsville is submitting a West Virginia Municipal Home Rule Program Application pursuant to the Act. West Virginia Code §8-1-5a(g) provides that prior to submitting its written plan to the Home Rule Board, the municipality shall:

- (1) Hold a public hearing on the written plan;
- (2) Provide notice of the public hearing at least thirty (30) days prior to the public hearing by a Class II legal advertisement;
- (3) Make a copy of the written plan available for public inspection at least thirty (30) days prior to the public hearing; and,
- (4) After the public hearing, adopt a municipal ordinance authorizing the municipality to submit a written plan to the Municipal Home Rule Board after the proposed municipal ordinance has been read two times as required by West Virginia Code §8-11-4.

A public hearing on the proposed written plan was held by the City Council of the City of New Martinsville on July 17, 2019, as shown by the copy of the New Martinsville City Council Minutes, enclosed with said Application. The City of New Martinsville provided at least thirty (30) days advanced notice of said public hearing by a Class II legal advertisement, as shown by the publisher's Affidavit of Publication issued by the Wetzel Chronicle, reflecting that said notice was published two times commencing on June 5, 2019 and ending on June 12, 2019, a copy of which Affidavit of Publication is enclosed with said Application. A copy of the proposed written plan was available for public inspection at the New Martinsville Municipal Building in the City of New Martinsville during business hours for each business day for such period of thirty (30) days following the first publication of said notice. After said public hearing, the City of New Martinsville adopted a municipal ordinance authorizing the municipality to submit the written plan to the Municipal Home Rule Board after the proposed municipal ordinance was read two times, as set forth in the Ordinance adopted by the Council of the City of New Martinsville on second and final reading on August 5, 2019, a copy of which document is enclosed with the said Application. Moreover, a copy of the New Martinsville City Council Minutes, from the August 5, 2019 meeting wherein the said ordinance was finally adopted are enclosed with said Application.

As provided in West Virginia Code §8-1-5a(i), it is my opinion that none of the ordinances, acts, resolutions, rules, or regulations envisioned in order to implement any of the City's Home Rule proposals would be contrary to the following:

- (1) Environmental law;
- (2) Laws governing bidding on government construction and other contracts;
- (3) The Freedom of Information Act;

- (4) The Open Governmental Proceedings Act;
- (5) Laws governing wages for construction of public improvements;
- (6) The provisions of West Virginia Code §8-1-5a(i);
- (7) The provisions of West Virginia Code §8-12-5a;
- (8) The municipality's written plan;
- (9) The Constitution of the United States or the Constitution of the State of West Virginia;
- (10) Federal law, including those governing crimes and punishment;
- (11) Chapters 60A, 61 and 62 of the West Virginia Code or any other provisions of the code governing state crimes and punishment;
- (12) Laws governing pensions or retirement plans;
- (13) Laws governing annexation;
- (14) Laws governing taxation; *Provided*, That it may enact a municipal sales tax up to one percent if it reduces or eliminates its municipal business and occupation tax; *Provided, however*, That if it subsequently reinstates or raises the municipal business and occupation tax it previously reduced or eliminated under the Municipal Home Rule Program, it shall reduce or eliminate the municipal sales tax enacted under the Municipal Home Rule Program in an amount comparable to the revenue estimated to be generated by the reinstated tax; *Provided, further*, if it imposes a municipal sales tax, it shall use the services of the Tax commissioner to administer, enforce, and collect the tax required by the provisions of §11-15-1 *et seq.*, §11-15A-1 *et seq.*, and §11-15B-1 *et seq.* the code and all applicable provisions of the Streamlined Sales Use and Tax Agreement; And *Provided further*, That the tax does not apply to the sale of motor fuel or motor vehicles; ;
- (15) Laws governing tax increment financing;
- (16) Laws governing extraction of natural resources;
- (17) Marriage and divorce laws;
- (18) Laws governing professional licensing or certification, including the administration and oversight of those laws, by state agencies to the extent required by law;

- (19) Laws, rules, or regulations governing the enforcement of state building or fire codes;
- (2) Federal laws, regulations or standards that would affect the state's required compliance or jeopardize federal funding;
- (21) Laws or rules governing procurement of architectural and engineering service;
- (22) The provisions of Chapter 17C of the West Virginia Code;
- (23) Laws, rules or regulations governing communication technologies or telecommunications carriers, as the term "telecommunications carrier" is defined by the Federal Communications Commission in 47 U.S.C. §153 or as determined by the Public Service Commission of West Virginia; or,
- (24) Laws governing the sale, transfer, possession, use, storage, taxation, registration, licensing, or carrying firearms ammunition or accessories thereof.

The City of New Martinsville understands and expressly agrees, pursuant to W.Va. Code §8-1-5a(j) that it will not pass an ordinance, act, resolution, rule or regulation that (1) affects persons or property outside the boundaries of the City except to the extent permitted under other provisions of the code and court decisions; (2) enacts an occupation tax, fee, or assessment payable by a nonresident of a City; or imposes duties on another governmental entity, unless the performance of the duties is part of a legally executed agreement between the City and other governmental entity, or is otherwise permitted by state law. In addition the City understands that it may not prohibit or effectively limit the rental of property, in whole or in part, or regulated the duration, frequency or location of such rental, in whole or in part as specifically set forth in §8-1-5a(k).

Based upon the foregoing, I am of the opinion, under existing law and as of the date hereof, that the Municipal Home Rule Program Application of the City of New Martinsville complies with statutory requirements as set forth in the Act.

Sincerely,



Carolyn G. Flannery

Attorney for the City of New Martinsville

CGF/akg

**No  
Outstanding  
State Fees  
Affidavit**





**CITY OF NEW MARTINSVILLE**  
MUNICIPAL BUILDING  
191 MAIN STREET  
NEW MARTINSVILLE, WEST VIRGINIA 26155

(304) 455-9120  
FAX (304) 455-9123

Where The Rail & River Meet

June 7, 2019

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

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

Ms. Browning:

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

Sincerely,

Steven A. Bohrer  
Mayor

# Agreement to Requirements Statement



Where The Rail & River Meet

**CITY OF NEW MARTINSVILLE**  
MUNICIPAL BUILDING  
191 MAIN STREET  
NEW MARTINSVILLE, WEST VIRGINIA 26155

(304) 455-9120  
FAX (304) 455-9123

June 7, 2019

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

Re: Agreement to Provisions of Act

Ms. Browning:

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

Sincerely,

Steven A. Bohrer  
Mayor

**Minutes  
of  
Public Hearing**



**CITY OF NEW MARTINSVILLE**  
MUNICIPAL BUILDING  
191 MAIN STREET  
NEW MARTINSVILLE, WEST VIRGINIA 26155

(304) 455-9120  
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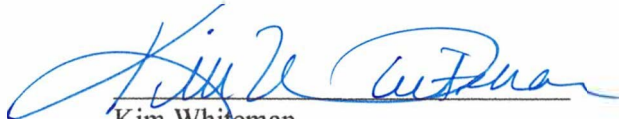
Where The Rail & River Meet

**CERTIFICATION**

I, Kim Whiteman, City Recorder of the City of New Martinsville, West Virginia, do hereby certify that on July 17, 2019 at 7:00 p.m., a public hearing was held. The subject of said hearing being the said City's application to participate in Municipal Home Rule and the ordinance authorizing submission of the same.

The attached are true, correct and complete copies of the pertinent pages of the New Martinsville City Council Agenda and the Minutes of the Council Meeting, both evidencing the Public Hearing.

Witness, the signature of the undersigned City Recorder of the City of New Martinsville, West Virginia and seal of the City of New Martinsville, West Virginia, this 18<sup>th</sup> day of July, 2019.

  
Kim Whiteman  
City Recorder

(SEAL)



# PUBLIC HEARING

Wednesday, July 17, 2019 @ 7:00 p.m.

Council Chamber

Home Rule Information

Immediately following:

## SPECIAL COUNCIL MEETING

### AGENDA:

- A.) First reading of the ordinance to submit Home Rule Application

City of New Martinsville  
Municipal Home Rule Application  
Resolution for a Public Hearing  
Announcement of first and second reading dates  
Monday, June 3, 2019

**Whereas:** The City of New Martinsville Common Council intends to submit a Municipal Home Rule Application, a public hearing be held, in the City Council Chambers, on Weds., July 17<sup>th</sup> at 7:00 PM.

**Whereas:** The first reading of the intent to submit the application be held immediately following the public hearing scheduled for Weds., July 17<sup>th</sup> at 7:00 PM and

**Whereas:** The second reading of the intent to submit the application be scheduled for Monday, August 5<sup>th</sup> during the Regular City Council Meeting scheduled at 7:30 PM.



Signature of motion made by/date



Signature of motion seconded by/date

**PUBLIC HEARING AND SPECIAL COUNCIL MEETING**  
**WEDNESDAY, JULY 17, 2019 @ 7:00 P.M.**  
**MUNICIPAL BUILDING, COUNCIL CHAMBERS**

**PLEDGE OF ALLEGIANCE**  
**PRAYER**

<b>PRESENT:</b>	<b>Steven A. Bohrer</b>	<b>Mayor</b>
	<b>Kimberley Whiteman</b>	<b>City Recorder</b>
	<b>Jeff Gieseke</b>	<b>Ward #1 Councilperson</b>
	<b>Joey Smith</b>	<b>Ward #2 Councilperson</b>
	<b>Ryan Yost</b>	<b>Ward #3 Councilperson</b>
	<b>Steve Pallisco</b>	<b>Ward #4 Councilperson (absent)</b>
	<b>Joel Potts</b>	<b>Ward #5 Councilperson (absent)</b>
	<b>Iris Isaacs</b>	<b>Ward #6 Councilperson</b>

**PUBLIC HEARING CALLED TO ORDER BY MAYOR BOHRER, QUORUM DECLARED TO DO BUSINESS FOR THE CITY AT 7:06 P.M.**

**MAYOR: WE ARE HERE TONIGHT TO DISCUSS HOME RULE. WITH HOME RULE, THE CITY OF NEW MARTINSVILLE CAN IMPLEMENT CHANGES IN SEVERAL THINGS WITH IN OUR CITY. AN EXAMPLE, WE HAVE SEVERAL DELAPIDATED BUILDINGS. WITH HOME RULE, WE WILL HAVE MORE POWER TO CLEAN UP THE TOWN. HOME RULE WILL ALLOW OUR BUILDING INSPECTORE AND POLICE DEPARTMENT TO ISSUE "ON THE SPOT" CITATIONS.**

**WE ALSO HAVE A CHANCE TO INCREASE OUR REVENUE WHICH WILL HELP IMPROVE OUR CITY. WITH THIS INCREASE, WE CAN TAKE CARE OF THE NEGLECTED PROPERTIES, UPGRADE EQUIPMENT, WE WILL BE ABLE TO FIX OUR STREETS AND HOPEFULLY IN TIME, TAKE CARE OF MANY OF THE ISSUES WE HAVENT HAD THE MONEY TO DEAL WITH.**

**DOES ANYONE HAVE ANY QUESTIONS OR COMMENTS? WE HAVE INFORMATION ON THE TABLE UP FRONT FOR ANYONE WHO WOULD LIKE ONE. IT LISTS ALL THE ORDINANCES THAT WE WISH TO CHANGE TO BETTER SERVE OUR CITY.**

**IF NO ONE HAS ANY QUESTIONS OR COMMENTS WE CAN MOVE FORWARD TO THE SPECIAL COUNCIL MEETING.**

**SPECIAL COUNCIL MEETING CALLED TO ORDER BY MAYOR BOHRER, QUORUM DELCARED TO DO BUSINESS FOR THE CITY AT 7:23 P.M.**

**MAYOR: COUNCIL WOMAN ISAACS, WOULD YOU LIKE TO SHARE THE FIRST READING OF THE ORDINANCE?**



**ISAACS: I WOULD FIRST LIKE TO SAY HOW EXCITED I AM ABOUT HOME RULE. LIKE THE MAYOR JUST STATED, WE WILL BE ABLE TO DO A LOT OF GREAT THINGS FOR OUR WONDERFUL CITY. I WOULD ALSO LIKE TO THANK RECORDER WHITEMAN AND BEV GIBB FOR ALL THEIR HARD WORK AND TIME THEY HAVE PUT IN TO GET THIS DONE. NO ONE KNOWS THE AMOUNT OF WORK THAT IT HAS TAKEN TO GET THIS ACCOMPLISHED AND I FEEL THEY NEED TO BE COMMENDED. I WOULD WALK INTO TO THE LARGE CONFERENCE, WHERE THEY WERE WORKING, AND YOU WOULDN'T BELIEVE THE PAPERS EVERYWHERE AND THE INFORMATION THEY WERE GATHERING TO GET THIS ACCOMPLISHED. WITH THAT, I THANK YOU BOTH.**

**WHITEMAN: THANK YOU DEANOR!**

**GIBB: THANK YOU!**

**ISAACS: IN A FORM OF A MOTION I WOULD LIKE TO READ THE ORDINANCE TO SUBMIT THE HOME RULE APPLICATION;**

**AUTHORIZING THE GOVERNINIG BODY OF THE CITY OF NEW MARTINSVILLE TO SUBMIT THE MUNICIPAL HOME RULE APPLICATION AND TO THE MUNICIPAL HOME RULE BOARD PURSUANT TO THE PROVISIONS OF WEST VIRGINIA CODE §8-1-5a, GENERALLY, AND §8-1-5a(f), PARTICULARLY.**

The Common Council of the City of New Martinsville duly adopted a resolution on June 3, 2019 scheduling a public hearing on the City of New Martinsville Municipal Home Rule Application for July 17, 2019.

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

The City Recorder caused to be published the Notice of Proposed Enactment of the Proposed Ordinance as a Class II Legal Ad on June 5, 2019 and June 12, 2019 in *The Wetzel Chronicle* newspaper, as required by law.

A copy of the written plan and application has been available to the public and may be inspected by the public at the office of the City Recorder, 191 Main Street, New Martinsville, West Virginia.

On July 17, 2019 at 7:00 p.m. in the New Martinsville City Council Chambers, 191 Main Street, New Martinsville, West Virginia, the Common Council conducted a public hearing during which interested parties had the opportunity to appear and their comments be heard and considered.

The Ordinance was presented to, and passed on first reading by, Council after the public hearing on July 17, 2019.

The second reading of the ordinance will be held at the regular council meeting on August 5, 2019 at 7:30 p.m.

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

This Ordinance shall become effective upon passage.

**GIESEKE: SO, MOVED.**

**SMITH: SECOND.**

**MAYOR: I HAVE A MOTION AND A SECOND. ANY DISCUSSION? ALL THOSE IN FAVOR SIGNIFY BY SAYING "AYE." OPPOSED? MOTION CARRIES UNANIMOUSLY. DO I HAVE A MOTION TO ADJOURN?**

**SMITH: SO, MOVED.**

**YOST: SECOND.**

**MAYOR: ALL THOSE IN FAVOR SIGNIFY BY SAYING "AYE." OPPOSED? MOTION CARRIES UNANIMOUSLY.**

**MEETING ADJOURN AT 7:39 P.M.**

  
\_\_\_\_\_  
STEVEN A. BOHRER, MAYOR

  
\_\_\_\_\_  
KIM WHITEMAN, CITY RECORDER



**CITY OF NEW MARTINSVILLE**  
MUNICIPAL BUILDING  
191 MAIN STREET  
NEW MARTINSVILLE, WEST VIRGINIA 26155

(304) 455-9120  
FAX (304) 455-9123

Where The Rail & River Meet

CERTIFICATION

I, Kim Whiteman, City Recorder of the City of New Martinsville, West Virginia, do hereby certify that on August 5, 2019 at 7:30 p.m., a public hearing was held during the regular Council Meeting of New Martinsville City Council. The subject of said hearing being the said City's application to participate in Municipal Home Rule and the ordinance authorizing submission of the same.

The attached are true, correct and complete copies of the pertinent pages of the New Martinsville City Council Agenda and the Minutes of the Council Meeting, both evidencing the Public Hearing.

Witness, the signature of the undersigned City Recorder of the City of New Martinsville, West Virginia and seal of the City of New Martinsville, West Virginia, this 20<sup>th</sup> day of August, 2019.

Kim Whiteman  
City Recorder

(SEAL)



**REGULAR COUNCIL MEETING**  
**MONDAY, AUGUST 5, 2019 @ 7:30 P.M.**  
**MUNICIPAL BUILDING, COUNCIL CHAMBERS**

**PLEDGE OF ALLEGIANCE**  
**PRAYER**

<b>PRESENT:</b>	<b>Steven A. Bohrer</b>	<b>Mayor</b>
	<b>Kimberley Whiteman</b>	<b>City Recorder</b>
	<b>Jeff Gieseke</b>	<b>Ward #1 Councilperson</b>
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	<b>Joel Potts</b>	<b>Ward #5 Councilperson</b>
	<b>Iris Isaacs</b>	<b>Ward #6 Councilperson</b>

**MEETING CALLED TO ORDER BY MAYOR BOHRER, QUORUM DECLARED TO DO BUSINESS FOR THE CITY AT 7:32 P.M.**

**MAYOR:** First item on the agenda is the approval of July 2019 Council Meeting Minutes (waive reading). Do I hear a motion?

**POTTS:** So, moved

**GIESEKE:** Second.

**MAYOR:** I have a motion and a second. Any discussion? All those in favor signify by saying "Aye." Opposed? Motion carries unanimously. Next item on the agenda is approval of regular City invoices.

**PALLISCO:** So, moved.

**POTTS:** Second.

**MAYOR:** All those in favor signify by saying "Aye." Opposed? Motion carries unanimously. Next item on the agenda is guest and special items. No guests or special items tonight. So, we will move on to Councilman Isaacs, Committee one.

**ISAACS:** Yes, Mr. Mayor. I have several things. I would first like to stress something. There has been a good bit on social media. It is required by state that any municipality has a budget that is balanced. We have never not met that. We had a shortage for a department and we put enough money to meet that. That is where the so-called shortage came up. The recorder's office is under strict guide lines with the state. There has not been any kind of disapproval from state. I wanted to clarify that from some of the social media. If there are any questions of what is going on, I'm always open and I know Kim's office is always open. The budget is published and open to the public. I am not trying to hide anything from the public. That is what that story from social media is about.

**MAYOR:** If you would allow me to say something.

**REGULAR COUNCIL MEETING**

**August 5, 2019**

**PAGE 2**

**(CONTINUE)**

**ISAACS: Yes, sir.**

**MAYOR: Also, along those lines. We have an auditor that comes every year that is not picked by us but by the state. The auditor is not going to cut anyone any slack. I just wanted to clarify that.**

**ISAACS: Thank you! This is in a form of a motion. This is another example of what we do. We are making a revision to the budget submitted to the state for the 2019-2020 budget. It is basically an increase in the B&O from Data Max and we are putting that extra money in to the police budget because we have several going to the academy for training and advertisement for testing. I'm making a motion to approve the revision to the 2019-2020 budget.**

**GIESEKE: Second.**

**MAYOR: All those in favor signify by saying "Aye." Opposed? Motion carries unanimously.**

**ISAACS: Second thing I have is a request approval to remove the withholding of monies from the probation period in the general fund.**

**SMITH: Second.**

**MAYOR: All those in favor signify by saying "Aye." Opposed? Motion carries unanimously.**

**ISAACS: The third item concerns issues we have been having on Cypress Street. It has been requested that the city put some lights up there. I request the approval to purchase two new street lights for Cypress Street with a limit of \$700.00. That is coming out of account 17514016 contractual service maintenance and repair.**

**PALLISCO: Second.**

**MAYOR: All those in favor signify by saying "Aye." Opposed? Motion carries unanimously.**

**ISAACS: Last one. This is the second and final reading for home rule.**

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

The Common Council of the City of New Martinsville duly adopted a resolution on June 3, 2019 scheduling a public hearing on the City of New Martinsville Municipal Home Rule Application for July 17, 2019.

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**REGULAR COUNCIL MEETING**  
**August 5, 2019**  
**PAGE 4**

**(CONTINUE)**

**PASSED AND APPROVED ON FIRST READING: JULY 17, 2019.**

**I will need a second on that.**

**POTTS: Second.**

**MAYOR: All those in favor signify by saying "Aye." Opposed? Motion carries unanimously. Alright, lets move on to Committee two, Councilman Potts.**

**POTTS: The electric department has had many meetings. The Hydro is getting the crane rebuilt for the outage coming up.**

**MAYOR: Ok, next, Councilman Pallisco.**

**PALLISCO: We are getting some stuff done. Tommy and his gang are working hard. We finally got Neubauer finished. It looks great. The street on Hydro at the top near the church is finished. It was in bad shape. They have been patching the entire city and it needs it. We are looking into possible leasing for a street sweeper. We know our streets need cleaned. We had an issue with Martin Marietta with all the dirt and dust. Its continuous. We are not backing off. We met with the environmentalist from Martin Marietta and we are working together on a solution. The folks that live on that street live in filth and they should not have to live like that. Our employees work right next to the plant. Its only fair that Martin Marietta do their part, we are doing ours. We are getting ready to lose our part timers. They are heading off to college. They were busy with painting curbs and trimming. Hats off to Tommy and the gang.**

**MAYOR: Next, Committee four, Councilman Gieseke.**

**GIESEKE: Committee four met last week. Chief Cecil and Detective Harris were there. We are looking in ways to acquire a police canine. It will be officer Chichick's dog. Its possible we will have another dog on the force soon. We hired a new officer, Christopher Folmar. He is a full-time patrolman. His start date July 29, 2019. He will have to go to the academy. That is why we have the extra B&O money going to the police department. We have three officers that have to attend. Also, we had five overdoses in the city. Dope was intercepted in Glendale heading south earlier this evening. If you see something say something.**

**MAYOR: Thank you Jeff. Committee five, Councilman Smith.**

**SMITH: I have nothing to report.**

**MAYOR: Ok, we will move on to Committee six, Councilman Yost.**

**YOST: I have nothing to report.**

(CONTINUE)

**MAYOR:** Old business. I have talked about this before and I will talk about it every meeting. If you see something going on in your neighborhood that looks suspicious. Call the police department. Let them know what's going on. We can't allow that to consume our community. It's a wonderful place to live and raise your children. Be in tune with your neighborhood. Any new business? No. Do I have a motion to adjourn?

**POTTS:** So, moved.

**GIESKE:** Second.

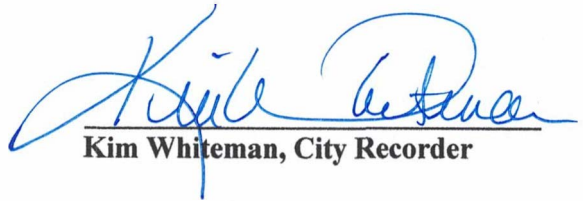
**MAYOR:** All those in favor signify by saying "Aye." Opposed? Motion carries unanimously. Meeting adjourned.

MEETING ADJOURNED AT 7:45 PM



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Steven A. Bohrer, Mayor



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Kim Whiteman, City Recorder