

Town of Auburn

Municipal Home Rule Pilot Program

Phase III

Application



TOWN OF AUBURN

PO BOX 37
AUBURN WV 26325

Robert Lowther, Mayor

Sherry L. Combs, Recorder

March 29, 2016

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

Re: Town of Auburn Municipal Home Rule Plan

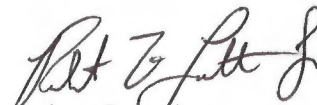
Dear Members of the Municipal Home Rule Board:

On behalf of the citizens and elected officials of the Municipality of Auburn, West Virginia, I am submitting eight (8) original copies of the Municipality's written plan to participate in Phase III of the Municipal Home Rule Pilot Program. A PDF copy of this written plan will be sent by email to Debbie Browning at the West Virginia Development Office.

Auburn is a Class IV municipality located in Ritchie County, West Virginia. The municipality has 97 people, and approximately 50 households.

We look forward to participating in Phase III of the Municipal Home Rule Pilot Program. Should the Board have any questions about our written plan or need any additional information, please do not hesitate to contact me.

Sincerely,



Robert Lowther

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Municipal Home Rule Pilot Program Phase III APPLICATION

SECTION I: APPLICANT INFORMATION	
A. General Information	
Name of Municipality: Town of Auburn	
Certifying Official: Robert Lowther	Title: Mayor
Contact Person: Robert Lowther	Title: Mayor
Address: P.O. Box 37	
City, State, Zip: Auburn, WV 26325	
Telephone Number: 304-349-3357	Fax Number: 304-349-2494
E-Mail Address: townofauburn@yahoo.com	
2010 Census Population: 97	
B. Municipal Classification	
<input type="checkbox"/> Class 1 <input type="checkbox"/> Class II <input type="checkbox"/> Class III <input checked="" type="checkbox"/> Class IV	
C. Category of Issues to be Addressed (please attach descriptions for applicable categories)	
<input type="checkbox"/> Tax <input type="checkbox"/> Organization <input checked="" type="checkbox"/> Administration <input type="checkbox"/> Personnel <input type="checkbox"/> Other	

SECTION II: NARRATIVE (written plan, including the following)
<p>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.</p> <p>Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.</p> <p>Proposed solution(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include:</p> <ol style="list-style-type: none"> 1) Proposed solution(s) in one of the five areas (tax/administrative/organization/personnel/other) 2) If revenue related, estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.

SECTION III: AFFIDAVITS
Hearing Mandate Verification Publication Mandate Verification Ordinance Authorizing Submission of Plan Fiscal Impact Worksheets/Formulas (if revenue related) Feasibility Study (if taxes are proposed) Attorney Opinion (application complies with statutory requirements) State of West Virginia Fees Statement (none outstanding)

Municipal Home Rule Pilot Program Phase III

APPLICATION CHECKLIST

SECTION I: APPLICANT INFORMATION	
Page No.	
1	General Information
1	Municipal Classification
5-7	Specific Issue(s) to be Addressed
1, 6, 7	Issue(s) Category: Tax/Organization/Administrative/Personnel/Other

SECTION II: NARRATIVE	
Page No.	
5-7	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.
5-7	Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.
5-7	Proposed solution(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include: 1) Proposed solution(s) in one of the five areas (tax/administrative/organization/ personnel/other) 2) If revenue related, estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.

SECTION III: AFFIDAVITS	
Page No.	
9	Hearing Mandate Verification
12	Publication Mandate Verification
13	Ordinance Authorizing Submission of Plan
N/A	Fiscal Impact Worksheets/Formulas (if revenue related)
15	Attorney Opinion (application complies with statutory requirements)
16	State of West Virginia Fees Statement (none outstanding)

SECTION II. NARRATIVE

Executive Summary

The Town of Auburn is a Class IV municipality located on State Route 74 in east south-east Ritchie County. The nearest neighboring counties are Gilmer County and Calhoun County. Auburn has a population of 97 persons, and approximately 50 housing units. No commercial businesses are located in the Town. The nearest municipalities to Auburn are Glenville, in Gilmer County, and Harrisville, in Ritchie County, both approximately 18 miles away from Auburn. Auburn's median household income is \$9,931.

Currently there are no public water or sewer services in Auburn. Residents obtain potable water from shallow wells, and wastewater is discharged untreated into roadside ditches, storm sewers, and into Bone Creek, a tributary of the Hughes River. The shallow water wells are being contaminated by the untreated wastewater discharges. Further, fecal coliform contamination, along with oxygen depletion, is causing Bone Creek to become a cesspool as it flows through Auburn, particularly when the stream volume declines in the summer and fall.

The residents of Auburn are experiencing a dire public health hazard from these conditions. Due to this health hazard, the Mid-Ohio Valley Health Department ("MOVHD") located in Parkersburg, West Virginia, has notified the Town and its residents that MOVHD will seek criminal action against the Town and individual property owners for the illegal sewage discharges unless the Town and its residents implement a sewage treatment project.

Auburn is working with the West Virginia Department of Environmental Protection ("DEP") to develop and implement a sewer project, and has submitted an application for grant money to the West Virginia Infrastructure and Jobs Development Council. Auburn has hired a consulting engineer to design the sewer system, and said design work is on-going. Due to the fact that almost all of the property in Auburn is in the 100 year floodplain, a conventional gravity collection and central treatment sewer system is not suitable. Thus, a decentralized sewer system, specifically, an individual Orenco recirculating filter treatment system, is being designed.

The Auburn sewer system will provide service for about 50 customers. The total project cost is estimated to be approximately \$2,714,725. Due to the severe public health hazard, and because this small group of customers cannot afford to pay loan debt service on the sewer system, the DEP has committed a Clean Water State Revolving Fund ("CWSRF") grant of \$303,000 for the Project's design and a CWSRF debt forgiveness loan of \$911,725 for the Project's construction. Additionally, the Town has submitted an application for a Small Cities Block Grant of \$1,500,000 for the project.¹

¹ The Small Cities Block Grant Fund is administered by the Development Office of the West Virginia Department of Commerce. The Small Cities Block Grant program ("SCBG") provides federal funds for community and economic development projects throughout West Virginia. The SCBG program supports the development of viable communities by assisting in the provision of a suitable living environment and expanding economic opportunity, principally for those of low and moderate income (80 percent and below median household income). Eligible units of local government may receive SCBG funds if they are documented to fulfill one of three national objectives:

- Activities benefiting low- and moderate-income people.
- Activities that aid in the prevention or elimination of slums or blight.

In moving forward with the sewer project in order to address the Town's public health hazard and keep its residents from facing criminal action, the Town has recognized that the sewer system cannot be operated as a typical, regulated public utility, because the burden of the costs of a regulated public utility would be too great for this small number of low-income customers to bear. In fact, the Town believes that to be successful, and for monthly operational fees to stay in a range that the residents can afford, the Town needs the flexibility to utilize innovative ideas, such as leasing to the residents individualized treatment units that will be installed on residents' property. While the Town will own and lease individualized treatment units to residents, the "system" will be operated and maintained through a Wastewater Management Association, a nonprofit corporation operated by residents of the Town. This type of program has worked successfully in the Left Fork Community of Lincoln County, West Virginia, to address a situation similar to the Town's.

It is important to note that Auburn's proposed sewer system will be regulated by the DEP. Each treatment unit will have an individual WV NPDES General permit, and will be accountable to the DEP for filing periodic effluent test results. The MOVHD will also have a regulatory role. Thus, the fact that Auburn's proposed decentralized sewer system would not be a regulated public utility will have no adverse impact on the regulation of water quality in Bone Creek.

In this written plan, Auburn seeks the approval of the Municipal Home Rule Board to address its pressing need to solve its public health hazard through the construction and operation of a public sewer system without the attendant public utility requirements, and to have flexibility to lease equipment related to individual home treatment units to residents without auction and at less than fair and adequate consideration, which the Town is powerless to do under current West Virginia law.

*Activities designed to meet community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and where other financial resources are not available to meet such needs.

Specific State Laws, Policies, Acts, Resolutions, Rules or Regulations

Problem No. 1:

The primary problem is W. Va. Code § 24-2-1, which reads, in relevant part:

§24-2-1. *Jurisdiction of [Public Service] commission; waiver of jurisdiction.*

(a) The jurisdiction of the commission shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, . . . sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems: Provided, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method . . . the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission regardless of the number of customers served by the innovative, alternative method. . . . (Emphasis added.)

Specific Problem Caused by the Legal Barrier:

The cost and administrative burden for the Town to be required to operate as a public utility under the Public Service Commission's rules and regulations will cause the needed sewer system to be too costly for the residents to bear.

If the sewer system is required to operate as a public utility under the Public Service Commission's rules and regulations, the cost of operating the system will significantly increase and impose additional administrative burdens on the Town. It is likely that a public utility will need to charge residents more than they can realistically afford to pay, given Auburn's median household income is only \$9,931.

Proposed Solution:

Permit the Town of Auburn to exercise control over the implementation of an innovative, decentralized sanitary sewer system to serve the Town's residents without being a public utility and without being subject to the jurisdiction of the Public Service Commission. This would provide the Town the flexibility needed to operate the system in a manner that best serves its residents. Additionally, the Town would have the flexibility to assist with the establishment of a nonprofit Wastewater Management Association governed by the property owners, the Town's residents.

Categorization of Solution:

_____ Tax X Administrative _____ Organization _____ Personnel

Fiscal Impact: None

Problem No. 2:

The West Virginia Code mandates that leases of real or personal property owned by a municipality be for fair and adequate consideration. W. Va. Code § 8-12-18 (sale, lease or disposition of other municipal property) reads, in relevant part:

(c) In all other cases involving a lease, any municipality is hereby empowered and authorized to lease as lessor any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration and for a term not exceeding fifty years. Every lease shall be authorized by resolution of the governing body of the municipality, which resolution may specify terms and conditions which must be contained in such lease: *Provided*, That before any proposed lease is authorized by resolution of the governing body, a public hearing on the proposed lease shall be held by the governing body after notice of the date, time, place and purpose of the public hearing has been published as a Class I legal advertisement in compliance with the provision of article three, chapter fifty-nine of this code and the publication area for the publication shall be the municipality. The power and authority granted in this subsection shall be in addition to, and not in derogation of, any power and authority vested in any municipality under any constitutional or other statutory provision now or hereafter in effect. (Emphasis added.)

Specific Problem Caused by the Legal Barrier:

The requirements imposed by this statutory provision to lease personal property for “fair and adequate consideration,” after a public hearing and the publication of a Class I legal advertisement, will prevent the Town from leasing treatment units to the property owners whose property will be served by said units at an affordable price to advance the purpose of eliminating the current public health hazard.

Proposed Solution:

Auburn seeks authority to enact an ordinance allowing it to lease treatment units and necessary appurtenances to a property owner who is a resident of the Town for use in treating sanitary sewage for less than its fair market value and without hearing or legal advertisement in order to facilitate the implementation of the public sewer system and eradicate the current public health hazard.

Categorization of Solution:

_____ Tax X Administrative _____ Organization _____ Personnel

Fiscal Impact: None

Section III. Affidavits and Attachments to Home Rule Application

Hearing Mandate Verification

Publication Mandate Verification

Ordinance Authorizing Submission of Plan

Attorney Opinion

State of West Virginia Fees Statement

TOWN OF AUBURN

**PO BOX 37
AUBURN WV 26325**

Robert Lowther, Mayor

Sherry L. Combs, Recorder

Town of Auburn
Office of the City Clerk
P. O. Box 37
Auburn, WV 26325

I, the undersigned Town Recorder of Auburn, West Virginia, do hereby certify that on March 21, 2016, at 7:00 p.m., a Public Hearing was held on the Town’s proposed written home rule plan in conformity with the requirements of W. Va. Code § 8-1-5a (2013).

Attached are true, correct and complete copies of the Auburn Town Council Agenda, evidencing the Public Hearing and the signature of citizens who spoke either in favor of or against the written plan and its submission to the Municipal Home Rule Board pursuant to Bill No. 2016-1.

Witness the signature of the undersigned Town Recorder of the Town of Auburn, West Virginia, and the seal of the City, this 28th day of March, 2016.



Sherry L. Combs
Sherry L. Combs
Town Recorder

PUBLIC NOTICE

AUBURN TOWN COUNCIL WILL HOLD SPECIAL MEETINGS AT TOWN HALL

MONDAY, MARCH 21ST 7:00PM

AGENDA

- 1. Call to Order**
- 2. Review of Home Rule Application**
- 3. Public Hearing on Home Rule Application**
- 4. First reading of ordinance to apply for Home Rule**
- 5. Council vote on ordinance**
- 6. Adjourn**

MONDAY, MARCH 28TH 7:00PM

AGENDA

- 1. Call to Order**
- 2. Second reading of ordinance to apply for Home Rule**
- 3. Council vote on ordinance adoption**
- 4. Adjourn**

PUBLIC HEARING

March 21, 2016

The purpose of this public hearing is to receive comments from the public regarding the Town of Auburn's written plan to participate in Phase III of the Municipal Home Rule Pilot Program and Bill No. 2016-1, which authorizes the Mayor to submit the written plan to the Municipal Home Rule Board.

In favor of:

- | | |
|----------------------------|-----------|
| 1. <u>Sherry Combs</u> | 9. _____ |
| 2. <u>Pat & Pat J.</u> | 10. _____ |
| 3. <u>Norman Collins</u> | 11. _____ |
| 4. <u>Wesley Reed</u> | 12. _____ |
| 5. _____ | 13. _____ |
| 6. _____ | 14. _____ |
| 7. _____ | 15. _____ |
| 8. _____ | 16. _____ |

Opposed to:

- | | |
|----------|-----------|
| 1. _____ | 9. _____ |
| 2. _____ | 10. _____ |
| 3. _____ | 11. _____ |
| 4. _____ | 12. _____ |
| 5. _____ | 13. _____ |
| 6. _____ | 14. _____ |
| 7. _____ | 15. _____ |
| 8. _____ | 16. _____ |

Publication Mandate Verification

INVOICE AND AFFIDAVIT OF PUBLICATION



The Pennsboro News

103 North Spring Street, P.O. Box 241
 Harrisville, WV 26362
 Ph. 304.643.4947 • Fax 304.643.4717

WEST CENTRAL PUBLISHING
 FEDERAL I.D. NO. 55-06700561
 STATE OF WEST VIRGINIA
 COUNTY OF RITCHIE, to wit:

I, James McGoldrick, being first duly sworn upon my oath, do depose and say:

- that I am Publisher of The Pennsboro News, a Democratic newspaper,
- that I have been duly authorized to execute this affidavit,
- that such newspaper is regularly published weekly for at least fifty weeks during the calendar year, in the municipality of Harrisville, Ritchie County, West Virginia.
- That such newspaper is a newspaper of "general circulation" as defined in Art. 3, Chap. 59 of the Code of West Virginia 1931 as amended, within Ritchie County
- that such newspaper averages in length four or more pages, exclusive of any cover, per issue;
- that such newspaper is circulated to the general public at a definite price or consideration;
- that such newspaper is a newspaper to which the general public resorts for passing events or a political, religious, commercial and social nature and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices;
- and that the annexed notice described as follows:

Notice of Public Hearing Town of Auburn

WAS PUBLISHED IN SAID NEWSPAPER AS FOLLOWS:

TIMES	DATES
Two	Feb. 17 and 24, 2016

PUBLICATION CHARGES	\$64.75
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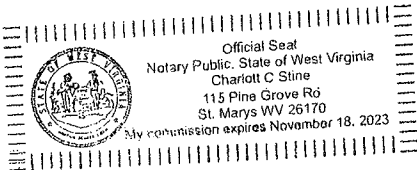
CERTIF-BILL TO

Mid-Ohio Valley Regional Council
 PO Box 247
 Parkersburg, WV 26101

(signed) *James McGoldrick*

NOTARIZATION

Taken, sworn to and subscribed before me this 24th
 day of February, 20 16
Charlott C. Stine
 Notary Public



PLEASE RETURN A COPY OF THIS INVOICE WITH YOUR PAYMENT TO:

P.O. BOX 241, Harrisville, WV 26362

NOTICE OF PUBLIC HEARING ON TOWN OF AUBURN'S MUNICIPAL HOME RULE PLAN APPLICATION

Notice is hereby given that a public hearing will be held on the Town of Auburn's proposed Municipal Home Rule Plan Application at a special meeting of the Council of the Town of Auburn ("Town Council") to be held on March 21, 2016 at 7:00 p.m. at Town Hall, Auburn, West Virginia. The purpose of the public hearing is to discuss the proposed Home Rule Plan Application. Any interested citizen may attend the public hearing and present comments concerning the Home Rule Plan Application, and all comments shall be considered and utilized by the Town Council in its application for acceptance into the Municipal Home Rule Program.

The first reading of the ordinance authorizing the Town of Auburn to submit its Municipal Home Rule Plan Application will take place on March 21, 2016 immediately following the public hearing.

Information concerning the Town of Auburn's Municipal Home Rule Plan Application may be viewed at the Auburn Post Office Monday-Friday between the hours of Noon and 2:00 p.m., and may also be viewed online at www.movrc.org. Written comments concerning the Home Rule Plan Application may be addressed to Mayor Robert Lowther, P.O. Box 37, Auburn, WV 26325.

Dated: February 17, 2016
/s/ Sherry L. Combs
 Recorder
 2-17, 2-14-R

Ordinance Authorizing Submission of Plan

TOWN OF AUBURN

**PO BOX 37
AUBURN WV 26325**

Robert Lowther, Mayor

Sherry L. Combs, Recorder

I, the undersigned Town Recorder of Auburn, West Virginia, do certify that the foregoing ordinance is a true, correct and complete copy of Bill 2016-1, authorizing submission of the Town of Auburn's written plan to the Municipal Home Rule Board, which was adopted by Council of the Town of Auburn on March 28, 2016.

Witness the signature of the undersigned Town Recorder of the Municipality of Auburn, West Virginia, and the seal of the Municipality, this 28th day of March, 2016.



Sherry L. Combs

Sherry L. Combs
Town Recorder

Bill No. 2016 - 1

AN ORDINANCE AUTHORIZING THE TOWN OF AUBURN TO SUBMIT TO THE MUNICIPAL HOME RULE BOARD AN APPLICATION AND WRITTEN PLAN CONSISTENT WITH THE REQUIREMENTS OF W. VA. CODE §8-1-5a TO ALLOW THE TOWN OF AUBURN TO PARTICIPATE IN PHASE III OF THE MUNICIPAL HOME RULE PILOT PROJECT

WHEREAS, the West Virginia Legislature, in 2007, enacted West Virginia Code §8-1-5a, known as the Municipal Home Rule Pilot Program;

WHEREAS, effective July 1, 2015, the Municipal Home Rule Pilot Program was expanded to include Class IV municipalities; and

WHEREAS, the Town of Auburn, a Class IV municipality, desires to submit an application to the Municipal Home Rule Board requesting approval to participate in Phase III of the Municipal Home Rule Pilot Project.

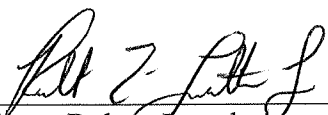
Now, therefore, be it ordained by the Council of the Town of Auburn, West Virginia:

SECTION 1: The Mayor is hereby authorized and directed to submit to the Municipal Home Rule Board, in accordance with the requirements of W. Va. Code §8-1-5a and application guidelines of the Board, the application and written plan, and to request the Board to approve the application and written plan thereby allowing the Town of Auburn to participate in Phase III of the Municipal Home Rule Pilot Program. The Mayor and the Town Administration are further authorized to do all things reasonably necessary to obtain approval by the Board of the City's application and written plan.

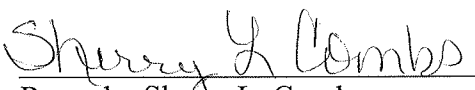
SECTION 2: This Ordinance shall be effective immediately upon adoption.

Passed on First Reading: 3-21-16

Adopted on Second Reading: 3-28-16



Mayor Robert Lowther



Recorder Sherry L. Combs

Attorney Opinion



March 29, 2016

Robert S. Kiss, Chairman
West Virginia Municipal Home Rule Board
c/o Debbie Browning
West Virginia Development Office
West Virginia Department of Commerce
Capitol Complex, Building 6, Room 525
Charleston, WV 25305-0311

Re: Application of the Town of Auburn, West Virginia, to participate in
Phase III of Municipal Home Rule Pilot Program

Dear Chairman Kiss:

As attorney for the municipality of Auburn, West Virginia, I have reviewed W. Va. Code § 8-1-5a (2013), the Application Guidelines for Participation in Phase III of the Municipal Home Rule Pilot Program and the Application of the Municipality to participate in Phase III of the Pilot Program, including all attachments thereto.

Based upon my examination of these documents and my understanding of the Application, it is my opinion that the Application complies with the provisions and requirements of W. Va. Code § 8-1-5a.

The Application does not include any proposed changes to ordinances, acts, resolutions, rules or regulations that are contrary to the provisions of W. Va. Code §§ 8-1-5a(j)(1) through (7) or prohibited by W. Va. Code §§ 8-1-5(k) (1) through (12).

The Municipal Home Rule Board may rely upon this opinion. If you have any questions, please contact me.

Sincerely,

A handwritten signature in blue ink that reads "Susan J. Riggs".

Susan J. Riggs
West Virginia State Bar ID No. 5246

State of West Virginia Fees Statement

TOWN OF AUBURN

**PO BOX 37
AUBURN WV 26325**

Robert Lowther, Mayor

Sherry L. Combs, Recorder

In compliance with the requirement of W. Va. Code § 8-1-5a(c)(1), I hereby swear or affirm under penalty of law for false swearing (W. Va. Code §61-5-3) that the municipality listed below is current in the payment of all fees to the State of West Virginia.

WITNESS THE FOLLOWING SIGNATURE:

Municipality's Name: Town of Auburn, West Virginia

Authorized Signature: *Robert Lowther* Date: 3-28-16
Robert Lowther, Mayor

State of West Virginia
County of Ritchie, to-wit:

Taken, subscribed, and sworn to before me this 28 day of March, 2016.

My commission expires: June 19th 2017

[NOTARY SEAL]

