

MUNICIPAL HOME RULE PROGRAM GUIDELINES

I. History

The West Virginia Legislature created the Municipal Home Rule Pilot Program in 2007, and set July 1, 2013, as the expiration date for the program. The home rule statute empowered municipalities participating in the pilot program to be creative in addressing local problems by implementing ordinances, rules, and regulations not otherwise available because of the various one-size-fits-all statutes that apply to all municipalities. The home rule statute authorized up to five municipalities to participate in the pilot program. The Municipal Home Rule Board approved Bridgeport, Charleston, Huntington, and Wheeling as the initial participants.

In 2013, the West Virginia Legislature amended the home rule statute. These amendments opened the program to 20 municipalities. The Legislature amended the home rule statute again in 2014 to prohibit participating municipalities from passing ordinances that conflict with state statutes regarding the purchase, ownership, carrying, and storage of certain firearms and ammunition.

The Legislature rewrote the home rule statute in 2015, when it opened the pilot program to an additional 14 municipalities, four of which had to be Class IV municipalities, and set July 1, 2019, as the expiration date of the program. By July 11, 2016, all 34 slots in the pilot program were filled.

Most recently, the 2019 Legislature passed Senate Bill 4 on March 9, 2019. This bill again rewrote the home rule statute, made the pilot program a permanent program, opened the program to all West Virginia municipalities (only four Class IV municipalities can be admitted to the program annually), and established a \$2,000 annual fee to be paid by each participating municipality beginning July 1, 2019. SB 4 was signed by the Governor on March 25, 2019, and went into effect on June 7, 2019.

II. Applications, Plans, and Amendments

- A. A municipality may apply to participate in the home rule program by submitting an initial Home Rule Plan (eight hard copies and one electronic copy) to the Municipal Home Rule Board **at least 30 days before a Home Rule Board meeting**. The Board typically meets

quarterly, in January, April, July, and October. A municipality's initial plan, and subsequent proposals to amend its plan, must be submitted by mail to: Municipal Home Rule Board, P. O. Box 11360, Charleston, WV 25339-1360, or by email to: MunicipalHomeRule@wv.gov. Any questions can be submitted to MunicipalHomeRule@wv.gov or by phone at 304-558-3356.

- B. A municipality may apply to the Home Rule Board to amend its plan by following the same steps as required to prepare and submit its initial application plan.
- C. A Home Rule Plan and Amendment Checklist and Plan Template is available on the Home Rule Board's page on the West Virginia Department of Revenue's website:
<https://revenue.wv.gov/homerule/Pages/default.aspx>.
- D. Plans and amendments must address the following specifics:
- Identify the specific state laws, policies, acts, resolutions, or rules that prevent the municipality from carrying out specific duties in the most cost effective, efficient, and timely manner.
 - Describe the specific problem(s) created by the above-stated laws, policies, acts, resolutions, or rules.
 - Define each proposed solution to the above described problem(s), including all proposed municipal ordinances or changes to laws, policies, acts, resolutions, rules, or regulations.
- E. Municipalities participating in the Home Rule Program may not pass an ordinance or regulation that is contrary to the following:
- Environmental laws;
 - Laws governing the bidding on government construction and other government contracts;
 - The Freedom of Information Act;
 - The Open Governmental Proceedings Act;
 - The Municipal Home Rule Statute;
 - The provisions of W. Va. Code § 8-1-5a;
 - The municipality's home rule plan;
 - The Constitutions of the United States and the State of West Virginia;

- Federal law, including those governing crimes and punishment;
- Chapters 60a, 61, and 62 of the West Virginia Code or any other provisions of the West Virginia Code governing state crimes and punishment;
- Laws governing pensions or retirement plans;
- Laws governing annexation;
- Laws governing taxation, except for the adoption of a municipal sales and use tax not to exceed one percent (1%), if the municipality eliminates or reduces its Business and Occupation Tax (see below);
- Laws governing tax increment financing;
- Laws governing the extraction of natural resources;
- Marriage and divorce laws;
- Laws governing the professional licensing or certification, including the administration and oversight of those laws by state agencies to the extent required by law;
- Laws, rules, or regulations governing the enforcement of state building or fire codes;
- Federal laws, regulations, or standards that would affect the state's required compliance or jeopardize federal funding;
- Laws or rules governing the procurement of architectural and engineering services (this limitation applies prospectively);
- The provisions of Chapter 17C of the West Virginia Code; and laws, rules, or regulations governing communication technologies or telecommunication 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
- Laws governing the sale, transfer, possession, use, storage, taxation, registration, licensing, or carrying of firearms, ammunition, or accessories thereof.

F. Home rule municipalities may not pass any ordinance, act, resolution, rule, or regulation that:

- Affects persons or property outside the boundaries of the municipality, except as otherwise provided by the West Virginia Code or court decision;
- Enacts an occupation tax, fee, or assessment payable by a nonresident of a municipality;

- Imposes duties on another government, unless the performance of duties is part of a legal agreement between the municipality and other governmental entity or otherwise permitted by state law; and
- Prohibits, or limits, the rental of property or regulates the duration, frequency, or location of such rental; Provided that a municipality may regulate activities that arise when a property is used as a rental so long as such regulation applies uniformly to all properties and, further, this provision shall not be construed as prohibiting a municipality from imposing a hotel occupancy tax.

G. Eight originals and one electronic copy of an initial home rule plan or proposed amendment (see Template) must be submitted to the Home Rule Board 30 days before a Board meeting in order for the Board to consider the proposed plan or amendment.

H. A municipality may amend its home rule plan at any time by following the same procedures for adopting its initial plan.

III. Municipal Sales and Use Tax

A. A municipality may implement an amendment to its home rule plan in order to assess a sales and use tax of up to one percent if it reduces or eliminates its municipal business and occupation tax (B&O tax). See Municipal Sales and Use Tax Guidelines, Tool Kit, and Checklist on the State Tax Department's website:

<https://tax.wv.gov/Business/SalesAndUseTax/MunicipalSalesAndUseTax/Pages/MunicipalSalesAndUseTax.aspx>.

B. Any municipal sales and use tax may not apply to the sale of motor fuel or motor vehicles.

C. If a municipality imposes a sales tax, it must use the services of the West Virginia State Tax Commissioner to administer, enforce, and collect the tax. The Tax Commissioner will retain reasonable administration costs of up to five percent of the collected taxes.

D. If a municipality subsequently reinstates or raises the B&O Tax it previously reduced or eliminated, it must eliminate the municipal sales tax in an amount comparable to the revenue estimated to be generated by the reinstated B&O Tax.

IV. Annual Assessment

Each home rule municipality must pay an annual assessment of \$2,000 to the Home Rule Board Operations Fund until the fund has a balance of \$200,000 or more. This annual fee is due on or before July 1 of each year, beginning July 1, 2019. This fee must be paid in order for a home rule municipality to remain in good standing. Failure to pay this fee may result in the assessment of a \$2,000 penalty and will prevent a municipality from amending its home rule plan until all fees are paid.

FOR MORE INFORMATION CONTACT:

Email: MunicipalHomeRule@wv.gov

Phone: 304-558-3356