



May 21, 2014

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

Re: City of Nitro Municipal Home Rule Plan

Dear Members of the Municipal Home Rule Board:

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

Nitro is a Class III municipality located in Kanawha and Putnam Counties, West Virginia. The municipality has a total area of 5.94 square miles. The municipality has 7,178 people, 3,015 households and 1,935 families residing in the City.

The City of Nitro is located along WV Route 25 and Interstate 64, on the Kanawha River, halfway between Charleston and Huntington, West Virginia. The Norfolk Southern Railroad maintains a rail line through Nitro. The economy of the City is diverse in that it consists of retail, financial, service and industrial businesses. There are prime locations for warehouses, an intermodal transportation facility and other commercial activities. Joint efforts between the City Administration and residents of the City have resulted in well defined economic plans, a twenty-year Nitro streetscape and pedestrian master plan, plans for a new water-park and City park, and other major improvements. These plans provide City leadership with a clear vision, and will help guide them in prioritizing projects and making fiscally responsible decisions.

We look forward to participating in Phase II 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,

David Casebolt, Mayor
City of Nitro, West Virginia

Municipal Home Rule Pilot Program Phase II

APPLICATION CHECKLIST

SECTION I: APPLICANT INFORMATION	
Page No.	
	General Information
	Municipal Classification
	Specific Issue(s) to be Addressed
	Issue(s) Category: Tax/Organization/Administrative/Personnel

SECTION II: NARRATIVE	
Page No.	
	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.
	Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.
	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 four areas (tax/administrative/organization/ personnel) 2) 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.	
	Hearing Mandate Verification
	Publication Mandate Verification
	Ordinance Authorizing Submission of Plan
	Fiscal Impact Worksheets/Formulas
	Attorney Opinion (application complies with statutory requirements)
	State of West Virginia Fees Statement (none outstanding)
	Agreement to Requirements Statement (firearms, ammunition and firearm accessories) Requirement repealed by Com. Sub. For S. B. 317 (2014).

Municipal Home Rule Pilot Program Phase II APPLICATION

SECTION I: APPLICANT INFORMATION	
A. General Information	
Name of Municipality: Nitro, West Virginia	
Certifying Official: Dave Casebolt	Title: Mayor
Contact Person: John Montgomery	Title: Member, Nitro City Council
Address: 214 Brookhaven Drive	
City, State, Zip: Nitro, WV 25143	
Telephone Number: 304-776-6458	Fax Number: N/A
E-Mail Address: montysmob@frontier.com	
2010 Census Population: 7,178	
B. Municipal Classification	
<input type="checkbox"/> Class I <input type="checkbox"/> Class II <input checked="" type="checkbox"/> Class III <input type="checkbox"/> Class IV	
C. Category of Issues to be Addressed (please attach descriptions for applicable categories)	
<input checked="" type="checkbox"/> Tax <input type="checkbox"/> Organization <input checked="" type="checkbox"/> Administration <input type="checkbox"/> Personnel	

SECTION II: NARRATIVE (written plan, including the following)
<p>General: The City of Nitro is located along WV Route 25 and Interstate 64, on the Kanawha River, halfway between Charleston and Huntington, West Virginia. The Norfolk Southern Railroad also maintains a rail line through Nitro and a rail yard is located there. The City is situated in both Kanawha County and Putnam County, and has a population of 7,178, as determined by the 2010 census.</p> <p>Nitro may literally be called a "boom town" in that the City is named after the World War I munitions plant that was located in the area that became Nitro; the munitions plant manufactured nitro cellulose for use in munitions used in the War. Ground was broken on December 23, 1917 for the construction of the first of twenty-seven 200-bed barracks; the people who lived in the barracks were employed to construct the munitions plant. During the 11 months it took to build the plant, over 100,000 construction workers were on the payroll. The name Nitro was selected by the Federal Ordinance Department.</p> <p>After the end of World War I, the munitions plant closed and the population dispersed to other locations, both in and around West Virginia. Nitro was incorporated in 1932 and, like a Phoenix, rose to great heights. Subsequent to incorporation, the Kanawha Valley became known as Chemical Valley and Nitro became the location of major chemical manufacturing plants. The work force consisted of several thousand employees from Nitro and surrounding areas, many of whom traveled 60-70 miles a day to work in the plants. However, the City suffered economically when the chemical plants were moved to other locations outside of West Virginia.</p> <p>There are prime locations for warehouses, an intermodal transportation facility and other</p>

commercial activities. Joint efforts between the City Administration and residents of the City have resulted in well-defined economic plans, a twenty-year Nitro streetscape and pedestrian master plan, plans for a new water-park and City park, and other major improvements. These plans provide City leadership with a clear vision, and will help guide them in prioritizing projects and making fiscally responsible decisions. Whether all of this along with utilizing the concept of self-determination is sufficient for Nitro to return to its former economic self is purely a matter of conjecture because it will be a long road to travel; that the City should make the effort has been decided with the filing of this application to participate in the Municipal Home Rule Pilot Project, Phase II (hereinafter "Home Rule Pilot Project").

However, it has long been the rule in West Virginia that a municipality only has the powers expressly granted by general statutes and its charter, the powers necessarily or fairly implied in or incidental to the powers expressly granted, and powers essential to the declared objects and purposes of the municipal corporation. See, Sheldon v. City of Wheeling, 146 W.Va. 691, 122 S.E.2d 427 (1961); Maxey v. City of Bluefield, 151 W.Va. 302, 151 S.E.2d 689 (1966). Therefore, if the Legislature has not authorized municipalities to perform certain acts, a municipality is prohibited from performing those acts.

This Application to authorize participation by the City of Nitro in the Home Rule Pilot Project demonstrates that the actions to be performed by the City are not explicitly authorized by the Legislature through its Acts, but that those actions are proper and necessary for good government and essential for municipal growth. To that end, it should be noted that many of the capital improvement projects to be performed by the City are quite extensive and some portions may take 15 or more years to complete; this is because the length of time will be determined by the availability of funding. Of course the length of time to complete the plan, while important, stands in the shadow of the fact that the City has developed extensive plans the completion of which can only be accomplished if the City is allowed to move forward through Home Rule Pilot Project.

In this written plan, we seek the approval of the Municipal Home Rule Board to address six problems the City is powerless to address under the current West Virginia Code. Each problem and the proposed solution are discussed below.

We understand that the plan hereby submitted will terminate on July 1, 2019 unless the Legislature continues the Home Rule Pilot Project; however, the ordinances enacted will continue in effect. Additionally, the City will cooperate fully with any performance review conducted by the Joint Committee on Government and Finance.

We look forward to being selected to participate in Phase II of the Municipal Home Rule Pilot Program so that we may address these problems for the benefit of our City and its residents.

The issues to be addressed in this Application are as follows.

1. Collection Of Unpaid And Delinquent Municipal Service Fees. (Administrative)
2. Authority To Enact Municipal Administrative Procedures Act Ordinance, Issue

And Enforce Administrative Regulations, Hold Hearings, And Collect Delinquent Taxes And Fees. (Administrative)

3. Municipal Government Oversight Of Expenditure Of Public Funds (Administrative)

4. Imposition Of Municipal Consumers Sales And Service Tax And Use Tax. (Taxation)

5. Authority To Reduce Speed Limits On State Roadways Within Municipal Boundaries. (Administrative)

6. Sale Of Municipal Property Outside Of The Auction Procedure. (Administrative)

PROBLEM

1. COLLECTION OF UNPAID AND DELINQUENT MUNICIPAL SERVICE FEES (ADMINISTRATIVE)

Background. West Virginia Code § 8-13-13 authorizes a municipality to enact fees for the provision of essential or special municipal services. Subsection 8-13-13(d) authorizes a municipality enacting such a fee to enact an ordinance permitting the municipality to file a lien on real property located within the municipal corporate limits for unpaid and delinquent fire, police or street fees.

The City of Nitro has enacted an ordinance imposing a municipal service fee for police protection, fire protection, street lighting, street maintenance, street cleaning, street improvements, ambulance service, and garbage and refuse collection. This ordinance also authorizes the filing of a lien against real property for unpaid and delinquent fees. The City also has enacted an ordinance that makes the property owner, not the lessee, liable for payment of the municipal service fee; as a result, even if the lessee vacates the structure in the middle of the night, the property owner still remains liable for the fee.

Problem. As stated in the General statement *supra.*, a municipality only has the powers expressly granted by general statutes and its charter, the powers necessarily or fairly implied in or incidental to the powers expressly granted, and powers essential to the declared objects and purposes of the municipal corporation. Therefore, if the Legislature has not authorized municipalities to do certain acts, a municipality is prohibited from performing those acts.

Even though West Virginia Code § 8-13-13(d) authorizes a municipality to file a lien on real property for unpaid and delinquent fire, police and street fees, placing a lien on the real property does little toward the collection of unpaid and delinquent fees if the property is not sold or otherwise transferred; the municipality needs the revenue currently, not at some unknown time in the future. Furthermore, there is a substantial amount of time and money involved when the liens must be refilled. The lien process is not cost effective, sufficient or effective.

It should be noted the City has taken other measures to assist in the collection of unpaid and delinquent municipal service fees.

- The City enacted an ordinance whereby the property owner is responsible for the payment of the municipal service fees, regardless of whether the property is leased to another.
- A delinquency fee of 10% of the unpaid billing is added to and becomes part of the amount of the delinquent and unpaid fee.
- The City Treasurer is authorized to monthly prepare and post at City Hall a listing of property owners who are delinquent in paying the monthly service fee.
- No City permits or licenses may be issued to a property owner until the delinquent fee is paid.
- Because non-payment of the fees is a violation of the municipal ordinance, the City is authorized to take the matter to the Municipal Court. If the property owner is found guilty of violating the ordinance and the fine, court costs and delinquent

fees are not paid within 90 days, the City may notify the West Virginia Division of Motor Vehicles to suspend the property owner's drivers license.

The City of Nitro at the end of November, 2013, had an active account deficit of \$418,462 for unpaid and delinquent municipal service fees. Some property owners simply refuse to pay the fees and do not care if a lien is filed against the property; many of those individuals are not planning to move in their respective lifetime and don't care what happens after their respective demise. In other situations, even though the municipal service fees continue to be imposed against the property, the property owner has died; the fees continue to be uncollected because the person who succeeds to ownership of the property refuses to record the deed or take any other action that would result in payment of the liability.

The foregoing demonstrates the City has established the legal basis for moving forward with the process to collect unpaid and delinquent municipal service fees. However, additional steps are considered to be necessary.

Proposed Solution. As indicated above, the lien process just is not cost effective and not sufficient. While the City Council has authorized certain actions, they are not sufficient to cause a property owner to pay the delinquent fees. There is no long term consequence for non-acquiescence. The City requests that it be authorized to enact an ordinance that:

- (1) creates an automatic lien that attaches to all real property immediately upon the imposition of all Nitro municipal fees respecting such property;
- (2) Nitro may foreclose on said property, under applicable West Virginia law respecting foreclosure procedures, without the requirement of going to circuit court;
- (3) requires closing agents, attorneys and others, to contact the City of Nitro prior to closing any real estate transaction involving real property within the City and that all such delinquent fees be paid in full from/at closing; and
- (4) requires the transferee of real property located within the City to record the deed to the property with the clerk of the County in which the property is located, and that the deed be recorded within 12 months of the date the transfer occurs.

Justification. The City should have effective and efficient tools to collect municipal service fees from persons who owe the fees. Additional tools for collecting delinquent fees should be authorized and utilized. By being able to require the payment of unpaid and delinquent fees at the time of closing, the City should be able to collect a greater amount of the fees. This would provide needed revenues for the City's coffers and help ensure that all fee payers pay what they owe.

PROBLEM 1
FISCAL IMPACT WORKSHEET FOR PROBLEM AND PROPOSED SOLUTION

Municipality: Nitro, West Virginia

Person who prepared fiscal statement: John E. Montgomery

Telephone number: (304) 776-6458

Email address: montysmob@frontier.com

Problem Number: 1

Category of Issue:

Tax Organization Administration Personnel

Type of Solution:

Ordinance Act Resolution Rule Regulation

A. Fiscal Note Summary

1. Summarize in a clear and concise manner what impact this solution would have on costs and revenues of the municipality if the proposed solution is implemented as written.

The City requests that it be authorized to enact an ordinance that:

- (1) creates an automatic lien that attaches to all real property immediately upon the imposition of all Nitro municipal fees respecting such property;
- (2) Nitro may foreclose on said property, under applicable West Virginia law respecting foreclosure procedures, without the requirement of going to circuit court;
- (3) requires closing agents, attorneys or other persons, to contact the City of Nitro prior to closing any real estate transaction involving real property within the City and that all such fees must be paid in full from/at closing; and
- (4) requires the transferee of real property located within the City to record the deed to the property with the clerk of the County in which the property is located, and that the recordation of the deed occur within 12 months of the date the transfer occurs.

The requested ordinance will accomplish four actions.

Action (1) while creating an automatic lien will not in and of itself increase revenues. In those situations that currently require the filing of a lien, the City will not be required to go through the time and expense of the lien filing process. The City has in the past few years filed on average 30 or more liens each year. By ordinance the City imposes \$21.00 in costs upon the delinquent fee payer. The City was paying approximately \$1,000.00 in lien filing fees. The creation of the automatic lien will allow the City to forego incurring those costs.

Action (2) will have an effect *re* reducing the expense of foreclosure procedures. To the extent that the foreclosure results in the payment of delinquent municipal service fees, there will be an increase in the revenues of the City.

Action (3) will have a positive effect on municipal revenues. This will reverse the trend where residents have sold their real property and moved from the City without paying the delinquent fees accrued on the property. Currently, the City is aware of approximately 10 properties per year that were sold with unpaid delinquent fees; the average amount of fees per property is approximately \$1,000.00. This will go far in collecting those fees, which currently total approximately \$10,000 per year.

Action (4) should result in an increase in the collection of the municipal service fee. There are within the City individuals who have inherited residential property but, while residing therein, have not recorded a deed that transfers the property to their respective name. There are approximately 20 of those situations currently, and as the population ages and residents pass away, the heirs have to determine what to do with the property. While the property is eventually sold, there is a long period of time until that act occurs, and the municipal service fee continues to accrue. There generally are approximately \$2,000.00 in delinquent fees accrued against each structure by the time the transfer of the property is recorded. By being able to require the transfer of the property out of the deceased's name and into the name of the beneficiary, the City will be able to move forward with the collection process. This should result in an approximate revenue gain of \$40,000.

The revenues to be derived and the expenses to be reduced from the foregoing actions are cumulative in effect. The City does not perceive there to be any substantial increase in expenses related to collection of delinquent municipal service fees. It is entirely probable that the costs of the collection efforts by the City will be substantially reduced and the collection process made more efficient.

2. Summarize in a clear and concise manner what impact this solution would have on residents and/or persons doing business in the municipality if the proposed solution is implemented as written.

For those property owners that are paying the municipal service fee, there will be no impact. However, those property owners who scoff at paying the municipal service fee will be subject to paying the amounts unpaid and delinquent, and will be subject to the actions noted until payment is made.

B. Fiscal Impact Detail – Nitro

Show overall effect in Item 1 and in Item 2 or 3.

In Item 4, explain the numbers entered in Items 1 and 2 or 3.

Effect of Solution	First Fiscal Year In Which Implemented	Second Fiscal Year
1. Estimated Total Cost	<u>\$1,1000</u>	<u>\$1,100</u>
a. Personal Services	0	0

b. Current Expenses	0	0
c. Repairs & Alterations	0	0
d. Assets	0	0
e. Other	\$1,100	\$1,100

2. Estimated Total Revenue Gain	<u>\$50,000</u>	<u>\$50,000</u>
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3. Estimated Total Revenue Loss	<u>0</u>	<u>0</u>
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4. Explanation of How Estimates Were Determined. Include the formula used or attach the worksheet.

The City's delinquent collection costs should be reduced substantially as a result of this proposal.

The lien filing costs should be eliminated because the lien will be created automatically.

Even though it is doubtful that foreclosure would be the result of failure to pay the municipal service fee, the ability to do so without going through some of the procedural hoops at the Circuit Court will reduce expenses.

We estimate there will be approximately \$1,000 in costs to commence the program for collecting delinquent fees at closing time. Those costs would be incurred in the printing of an appropriate notice of the program, mailing of the notice to attorneys in Kanawha and Putnam Counties as well as others who would fall within the position of closing agent, and possibly placing a notice in the newspaper and the State Bar News.

The City estimates the costs resulting from this action to be similar to the foregoing action in that an appropriate notification will be developed and that notification will be provided to transferee of the property. This cost is estimated to be no more than \$100 each year.

The worst case scenario would be that those who are delinquent in paying the fees will continue to be recalcitrant. However, it is more than likely that the ultimate response to this procedure will be substantial compliance with paying delinquent fees and a few residents who continue to refuse.

C. Community Assessment – Estimated Impact of Solution on Residents and Businesses During First Full Fiscal Year of Operation.

1. What groups will be affected by this solution?

Those who will be affected by the foregoing actions are the property owners who are not paying the municipal service fee.

2. What will be the impact(s) on these groups?

Eventually, most of those who are members of the group will pay the delinquent municipal service fee.

3. What evidence was used to form this opinion view?

It has often been said that most people want to do what is right although some may require a bit of coaxing. The City agrees with this view and intends to proceed accordingly.

4. What plans do you have, if any, to mitigate any negative impacts identified?

The City maintains the view that payment of delinquent municipal service fees is not a negative impact. In fact, those who pay the fee view the requirement that all property owners pays the fee as a positive impact.

D. Additional Information

There is no additional information.

PROBLEM

2. AUTHORITY TO ENACT MUNICIPAL ADMINISTRATIVE PROCEDURES ACT ORDINANCE, ISSUE AND ENFORCE ADMINISTRATIVE REGULATIONS, HOLD HEARINGS, AND COLLECT DELINQUENT TAXES AND FEES.

(ADMINISTRATIVE)

Background.: The City of Nitro has long imposed a municipal business and occupation tax that is similar to the State business and occupation tax in effect prior to July 1, 1987. The City also has long imposed municipal service fees and municipal license taxes.

When businesses filed both State and municipal B & O tax returns, both the businesses and the preparers of B & O tax returns were generally familiar with what the State and local laws required. During the ensuing years, the landscape has changed. New businesses have begun that never filed a State B & O tax return. The ways and means of doing business have changed. And, many persons familiar with the old State B & O tax statutes and regulations have retired or are approaching retirement age.

While that type of general history does not apply to the municipal service fees, there is still some confusion. Additionally, insofar as the municipal license tax is concerned, the authority to enact the tax is found in West Virginia Code § 8-13-4. The license tax rates are capped by State law and many of the rates are the State license tax rates in effect prior to July 1, 1970. Those rates appeared in articles 12 and 13A, chapter 11 of the West Virginia Code but have not been printed in the West Virginia Code since July 1, 1970. This can result in confusion among both municipalities and taxpayers.

City leaders perceive a need to provide more guidance to payers of the municipal B & O tax, the municipal license tax, the municipal service fee, as well as to City employees administering those taxes and fee. City leaders perceive a need to provide guidance in other areas as well.

Additionally, as discussed *supra*, some individuals and businesses refuse to pay the Municipal Service Fee. This refusal creates financial burdens on the City.

Problem. West Virginia Code § 8-11-1(a) provides that "the governing body has plenary power and authority to: (1) Make and pass all needful ordinances, orders, bylaws, acts, resolutions, rules and regulations not contrary to the constitution and laws of this state." West Virginia Code § 8-11-4 provides the procedure for the adoption of ordinances. However, no section in Article 11, Chapter 8 of the Code or elsewhere in Chapter 8 provides a separate procedure for the adoption of administrative rules and regulations. Additionally, the State Administrative Procedures Act codified in chapter 29A of the West Virginia Code does not apply to municipalities.

Furthermore, while the City may attach a lien on the real property for unpaid and delinquent Municipal Service Fees, the City is required to proceed under West Virginia Code §§ 8-13-13 and 8-13-15 by instituting a civil action in a court of competent jurisdiction. This results in expensive proceedings in either Magistrate or Circuit Court, often to collect amounts which do not justify the filing fees involved.

Summary of Proposed Solution. The City's proposed solution is two-fold:

(1) The City requests that it be authorized to adopt a city administrative procedures act pursuant to which it would be able to promulgate administrative regulations for its B & O tax, municipal service fee, business license tax and other taxes, fees and programs administered by the City.

(2) West Virginia Code § 8-13-5(g) requires that a municipal B & O tax ordinance include "procedures for the assessment and collection of such tax, which shall be similar to those procedures in article thirteen, chapter eleven of this code, as in existence on June thirtieth, one thousand nine hundred seventy-eight, or to those procedures in article ten, chapter eleven of this code." As a result, it is not uncommon for municipal B & O tax ordinances to provide for contested case B & O tax administrative decisions to be appealed to the local circuit court. However, there is no similar requirement for other taxes and fees imposed by municipalities. Therefore, the City further proposes that it be given the power and authority to hold and conduct hearings at the City level to determine the amount of delinquent municipal service fees, business license taxes and any other delinquent taxes or fees. The affected person or business, as authorized by West Virginia Code § 51-2-2(e), would be entitled to appeal the decision by the City to Circuit Court of Kanawha County or Putnam County, depending on the county in which the taxpayer is located. Once the decision by the City becomes final, the City would be authorized to file and record a lien against the judgment debtor with the appropriate county clerk, as well as to pursue other forms of debt collection if the debt is not settled within two years after the judgment becomes final. In conjunction with debt collection activities, the City seeks authority to utilize the services of a collection agency to collect delinquent B&O taxes, municipal service fees, or other municipal fees or taxes once the amount of delinquent taxes and fees has been determined through the hearing procedure.

In addition, West Virginia Code § 11-10-5d and case law interpreting this section currently prohibits the disclosure of any information received from the State Tax Commissioner by the City Treasurer in connection with B&O taxes; arguably, the restrictions may also apply to municipal B&O tax information generated by the City, and to City fees and other City business taxes. Section 8-13-5(g) requires the City to administer its municipal B&O tax through procedures that are similar to those in existence for the State B&O tax on June 30, 1978. As there have been no West Virginia Supreme Court of Appeals decisions interpreting the term "similar" as it relates to Section 8-13-5(g), the City disagrees with the application of those restrictions to municipal taxes and fees other than taxpayer information obtained from the State Tax Commissioner. The City would like to be able to publish, in the medium of its choice, very limited information, specifically name, tax year(s) and amount(s) owed, for persons or businesses with delinquent B&O taxes, municipal service fees, and other municipal taxes and fees, and requests authority to make such publication.

Justification. Decisions of the United State Supreme Court provide that a fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required. See, Connally v. General Constr. Co., 269 U. S. 385, 391 (1926); Federal Communications Commission v. Fox Television Station Inc., 567 U.S. _____, 132 S.Ct. 2307 (June 21, 2012).

Two connected but discrete Due Process concerns are: (1) that regulated parties should know what is required of them so they may act accordingly; and (2) that precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. See, Grayned v. City of Rockford, 408 U. S. 104, 108-109 (1972); Federal Communications Commission v. Fox Television Station Inc., 567 U.S. ____, 132 S.Ct. 2307 (June 21, 2012).

The use of administrative regulations will assure that Due Process concerns are addressed. Additionally, the use of hearings will assist in determining the amount of delinquent taxes and fees, and to assure the taxes and fees are imposed and collected in a fair and uniform manner.

PROBLEM 2
FISCAL IMPACT WORKSHEET FOR PROBLEM AND PROPOSED SOLUTION

Municipality: Nitro, West Virginia

Person who prepared fiscal statement: John E. Montgomery

Telephone number: (304) 776-6458

Email address: montysmob@frontier.com

Problem Number: 2

Category of Issue:

Tax Organization Administration Personnel

Type of Solution:

Ordinance Act Resolution Rule Regulation

A. Fiscal Note Summary

1. Summarize in a clear and concise manner what impact this solution would have on costs and revenues of the municipality if the proposed solution is implemented as written.

The City requests authority to adopt an administrative procedures ordinance so as to promulgate administrative regulations for all taxes, fees and programs administered by the City, to hold hearings relating to delinquent taxes and fees, and to publish limited information relating to delinquent taxes and fees (name, tax year, and amount).

2. Summarize in a clear and concise manner what impact this solution would have on residents and/or persons doing business in the municipality if the proposed solution is implemented as written.

It will provide the opportunity for the City to provide to property owners and businesses greater direction in understanding all municipal taxes and fees, an administrative forum where tax and fee liabilities may be determined, and a better method for administering the City's revenue collection.

B. Fiscal Impact Detail – Nitro

Show overall effect in Item 1 and in Item 2 or 3.

In Item 4, explain the numbers entered in Items 1 and 2 or 3.

Effect of Solution	First Fiscal Year In Which Implemented	Second Fiscal Year
1. Estimated Total Cost	<u>\$6,300</u>	<u>\$6,300</u>

a. Personal Services	\$6,000	\$6,000
b. Current Expenses	\$50	\$50
c. Repairs & Alterations	0	0
d. Assets	0	0
e. Other	\$250	\$250
2. Estimated Total Revenue Gain	\$20,000	\$20,000
3. Estimated Total Revenue Loss	0	0

4. Explanation of How Estimates Were Determined. Include the formula used or attach the worksheet.

Initially, the ordinance will be drafted by the City Council Ordinance Committee. Additionally, all regulations will be drafted by the same Ordinance Committee. While there will be no costs involved in the drafting process, the City Attorney will be required to review the materials; however, the review process should be covered in the employment contract. Therefore, there should be no cost to and through that stage.

The hearing process will create cost. While the City Treasurer could hold the hearings, it would be more appropriate for the City to contract with a person knowledgeable in municipal taxes and fees to hold the hearings and write the decision. The City will attempt to contract for a fee of \$250 for each hearing and written decision; at least for the first year, there should be no more than 2 hearings a month for a cost of \$6,000 per year. Additionally, there will be paper, copying and mailing costs which should total no more than \$50 for the first year. The other expense will be a device for recording any testimony and the device upon which the recording occurs; this may cost an additional \$250.

An estimate of Revenue Gain can really not be calculated. However, as the administrative procedures ordinance will apply to all municipal taxes and fees, there undoubtedly will be hearings to determine liabilities. The municipal service fee will be involved in some hearings and some B&O questions are fairly certain. There is a third fee as yet to be enacted: the MS4 fee. Nitro has been designated by the State Environmental Protection Agency as an entity to serve as a West Virginia Municipal Separate Storm Sewer System (MS4) community *via* management of a watershed. As this watershed covers real property both in and outside the boundaries of Nitro, there undoubtedly will be issues raised by property owners outside the City. A very conservative estimate of this revenue gain is \$20,000, with approximately one-third of that amount derived from the municipal service fee, the B&O tax, and the MS4 fee.

The City does not expect a revenue loss to occur.

C. Community Assessment – Estimated Impact of Solution on Residents and Businesses During First Full Fiscal Year of Operation.

1. What groups will be affected by this solution?

The groups to be affected by this are those who are averse to paying municipal taxes and fees.

2. What will be the impact(s) on these groups?

If they lose at the hearing, and if they appeal to municipal court and then to circuit court, they will be required to pay the taxes and fees due and owing.

3. What evidence was used to form this opinion view?

Payment would merely be the result of the process.

4. What plans do you have, if any, to mitigate any negative impacts identified?

There are no plans to mitigate the negative impacts identified because payment of municipal taxes and fees should be imposed uniformly on all taxpayers and fee payers..

D. Additional Information.

There is no additional information.

PROBLEM

3. MUNICIPAL GOVERNMENT OVERSIGHT OF EXPENDITURE OF PUBLIC FUNDS (ADMINISTRATIVE)

Background. Public funds are appropriated for use by public, quasi-public and non-profit organizations. However, proper accounting for those funds continues to be problematic. There have been many situations where funds properly appropriated for use by such an organization have been used for purposes that are contrary to the use for which appropriated; i.e., appropriated funds used for high salaries for organization officers; appropriated funds used to start a business; appropriated funds used for the purchase of a hot tub; etc.

Problem. The foregoing is not intended to indicate that all public, quasi-public and non-profit organizations abuse the public trust by misusing funds that are appropriated for specific purposes. However, there appear to be a sufficient number of instances to raise concerns. For example:

- In 2012, the funds deposited in some Nitro Police Department accounts were subject to question because of questionable expenditures. Issues were raised by the State Auditor's Office during an audit. While the situation was eventually resolved, the issues would not have arisen if proper oversight and accountability existed.
- There continues to be issues related to expenditures by the by the Nitro Fire Department related to revenues from the insurance surcharge program. The funds are transferred directly from the State Auditor's Office to the Nitro Fireman's Association. The City is not provided any oversight of the program and is not able to assure accountability of the funds.
- The City intends to develop a fund raising program for the purpose of constructing and operating a City museum. Even though the museum is a non-profit section I.R.C. § 501©(3) organization, the City will participate in funding the construction. Through such participation, the City seeks to assure proper oversight and accountability of all funds.

There are public, quasi-public and non-profit organizations that are located in and affiliated with the City of Nitro. There do not appear to be any current issues related to abuse of appropriated funds by those organizations. However, the City seeks to assure that concerns are not raised because if that were to happen, aspersions would be cast on the community character within the City, the result being a type of chilling effect on economic development and community development. While required reports and forms are filed with appropriate government agencies, there is concern that the government agencies do not have the time and personnel to perform needed review of those documents.

Summary of proposed solution. The City requests authority to enact an ordinance providing for municipal oversight of the expenditure of public funds by all public, quasi-public and non-profit organizations affiliated with and located within the City. This

oversight would not extend to other activities of quasi-public and non-profit organizations.

The oversight would be accomplished through an annual examination of records. Because such organizations would be affiliated with the City, their records would be audited, receipts of government appropriations would be tracked and expenditures would require prior approval by the City.

Justification. The availability of public funds is becoming more limited and taxpayers are more aware of situations that appear ripe for abuse. Greater accountability is being demanded by the public and the tolerance for abuse of public finances no longer reflects the "business as usual" attitude. The City is a stakeholder in this process and its handling of its financial responsibilities must be transparent. Nothing less can be accepted for the public funds available to public, quasi-public and non-profit organizations.

Additionally, the State has somewhat similar audit authority in West Virginia Code § 12-4-14 (accountability of persons receiving state funds or grants; sworn statements by volunteer fire departments; criminal penalties.), which reads, in relevant part:

(b) (1) Any person who receives one or more state grants in the amount of fifty thousand dollars or more in the aggregate in a state's fiscal year shall file with the grantor a report of the disbursement of the state grant funds. When the grantor causes an audit, by an independent certified public accountant, to be conducted of the grant funds, the audit is performed using generally accepted government auditing standards and a copy of the audit is available for public inspection, no report is required to be filed under this section. An audit performed that complies with Office of Management and Budget circular A-133, as published on the twenty-seventh day of June, two thousand three, and submitted within the period provided in this section may be substituted for the report.

(2) Any person who receives a state grant in an amount less than fifty thousand dollars or who is not required to file a report because an audit has been conducted or substituted as provided by subdivision (1) of this subsection shall file with the grantor a sworn statement of expenditures made under the grant.

(3) Reports and sworn statements of expenditures required by subdivisions (1) and (2) of this subsection shall be filed within two years of the end of the person's fiscal year in which the disbursement of state grant funds by the grantor was made. The report shall be made by an independent certified public accountant at the cost of the person receiving the state grant. State grant funds may be used to pay for the report if the applicable grant provisions allow. The scope of the report is limited to showing that the state grant funds were spent for the purposes intended when the grant was made.

PROBLEM 3
FISCAL IMPACT WORKSHEET FOR PROBLEM AND PROPOSED SOLUTION

Municipality: Nitro, West Virginia

Person who prepared fiscal statement: John E. Montgomery

Telephone number: (304) 776-6458

Email address: montysmob@frontier.com

Problem Number: 3

Category of Issue:

Tax Organization Administration Personnel

Type of Solution:

Ordinance Act Resolution Rule Regulation

A. Fiscal Note Summary

1. Summarize in a clear and concise manner what impact this solution would have on costs and revenues of the municipality if the proposed solution is implemented as written.

The City requests authority to enact an ordinance providing for municipal oversight of all public, quasi-public and non-profit organizations receiving government funding and located within the City but such oversight would only occur with respect to the expenditure of public funds by such organizations. This oversight would not extend to other activities.

The oversight would be accomplished through an annual examination of records, and specifically because such organization would be affiliated with the City, records would be audited, receipts of government appropriations would be tracked and expenditures would require prior approval.

It is anticipated the Office of the City Treasurer and City Council will provide the oversight. The additional costs would entail an additional person who would perform the tracking of receipts and expenditures. It is also anticipated that this activity would assist economic development which would provide increased revenues to the City.

2. Summarize in a clear and concise manner what impact this solution would have on residents and/or persons doing business in the municipality if the proposed solution is implemented as written.

To the extent there will be an impact on residents and/or persons doing business in the City, it will be minimal; actually, there should be no impact. However, assuring that City funds provided to public, quasi-public and non-profit organizations affiliated with and located within the City are properly accounted for will improve the level of trust placed in

City government.

B. Fiscal Impact Detail – Nitro

Show overall effect in Item 1 and in Item 2 or 3.

In Item 4, explain the numbers entered in Items 1 and 2 or 3.

Effect of Solution	First Fiscal Year In Which Implemented	Second Fiscal Year
1. Estimated Total Cost	<u>\$1,000</u>	<u>\$1,000</u>
a. Personal Services	<u>\$1,000</u>	<u>\$1,000</u>
b. Current Expenses	<u>0</u>	<u>0</u>
c. Repairs & Alterations	<u>0</u>	<u>0</u>
d. Assets	<u>0</u>	<u>0</u>
e. Other	<u>0</u>	<u>0</u>
2. Estimated Total Revenue Gain	<u>0</u>	<u>0</u>
3. Estimated Total Revenue Loss	<u>0</u>	<u>0</u>

4. Explanation of How Estimates Were Determined. Include the formula used or attach the worksheet.

As the primary activity involved in this activity is the tracking of revenue and expenses and the advance approval of expenditures, there should be very little cost, or revenue gain or loss. This is based on the fact that the expenditures are minimal and there should be very little time involved. Regardless, as there will be employee time involved in this activity, it is estimated the time will be no more than 10 hours a month or 120 hours a year.

C. Community Assessment – Estimated Impact of Solution on Residents and Businesses During First Full Fiscal Year of Operation.

1. What groups will be affected by this solution?

Public, quasi-public and non-profit organizations affiliated with and located within the City.

2. What will be the impact(s) on these groups?

There should be no impact except to assure the funds of the respective organizations are expended for authorized purposes.

3. What evidence was used to form this opinion view?

Knowledge of the nature of the activities to be taken.

4. What plans do you have, if any, to mitigate any negative impacts identified?

There are no plans to mitigate any negative impacts because there should be no actual negative impacts. However, the City will work closely with the organizations to alleviate concerns and any negative impacts.

D. Additional Information.

There is no additional information.

PROBLEM

4. IMPOSITION OF MUNICIPAL CONSUMERS SALES AND SERVICE TAX AND USE TAX. (TAXATION)

Background. The City of Nitro seeks to embark on a multi-year construction and renovation program to provide new or improved facilities to its residents, to encourage tourists and commercial activities into the City, to encourage economic development activities, to participate in public safety projects, to satisfy any debt service requirements established for securing funding for any of the foregoing, and to provide funding for any other activity approved by the City Council. To that end, the City hired and is using the services of a consultant to develop an economic development program as well as identify areas that need to be improved. The consultant's economic development report was very enlightening. The services of other consultants and appropriate engineering firms have also been used and they have provided reports, drawings and cost estimates.

The City of Nitro went through approximately two decades in which the City was administered with a view to reducing budgets by reducing services and not developing the resources of the City. The City now seeks to correct that situation through the commencement of a multi-year (possibly up to 20 years) capital improvement projects construction and renovation plan. To that end, the City secured the services of consultants and engineers for developing plans. Although not all plans have been fully developed, work on those plans continues. It should be noted that while cost estimates have been provided to the City, they are just that – estimates. No firm figures will be available until the specific projects are put out for bid, and that cannot occur until funding is available.

The Administration of the City believes in the concept that a well-organized city promotes the economic investment of business in the City. To that end, the Administration has invested in planning in the form of a Streetscape Program, a municipal swimming pool/water park to replace the current 50 year old swimming pool, lake improvements and riverbank improvements. This is a long-term program to accentuate and beautify certain aspects of the City. Sidewalks, storefronts and a vehicle parking area at the entrance to the downtown have been modernized. Residential homeowners are encouraged to improve the maintenance of their respective areas. Neighborhood pocket parks are being developed. The lake area is being studied for development purposes. These activities are restoring civic pride to the City. However, in order to continue this activity, additional revenues are needed.

Problem. West Virginia Code § 8-13-5 authorizes a municipality to enact a municipal B&O Tax on any business or occupation carried on within the City that was subject to the State B&O Tax imposed under West Virginia Code § 11-13-1 et seq., prior to July 1, 1987. West Virginia Code § 8-13C-4 authorizes a municipality to impose the Alternative Consumer Sales and Service Tax, Alternative Use Tax, and the Alternative Streamlined Sales Tax if the municipality repeals its municipal B&O Tax; however, if the municipality can demonstrate that its police and fireman pension funds are in a specified critical condition, it may continue with the municipal B&O Tax until the pension funds are funded to a specified level.

The projected amount of Sales Tax and Use Tax revenue would not be sufficient if the City repealed the municipal B&O tax. Additionally, if the restrictions discussed in the foregoing paragraph are not applicable, the Legislature has not authorized the enactment of any other major revenue source unless the municipality is granted Home Rule authority under West Virginia Code § 8-1-5a. And without additional revenue derived from the Sales and Use Taxes, the City cannot implement its capital improvement projects.

Summary of proposed solution. The City seeks authority pursuant to West Virginia Code § 8-1-5a to enact an ordinance that imposes a 1% municipal consumers sales and service tax and a 1% municipal use tax that would be administered, collected and enforced by the State Tax Commissioner and conform with the requirements of West Virginia Code § 11-10-11c and the requirements of I Streamlined Sales and Use Tax Administration Act as codified in West Virginia Code § 11-15B-1 *et seq.* It should be noted that while there is in Section 8-1-5a(k)(6) specific authorization for the enactment of a municipal sales tax, there is not a specific authorization for the enactment of a municipal use tax. While that authorization may fairly be implied within that subdivision, the authorization to impose a tax should be more than implied, it should be specifically stated. The West Virginia Consumer Sales and Service Tax and the West Virginia Use Tax, even though imposed under two different articles in Chapter 11 of the West Virginia Code, are stated to be complimentary taxes in West Virginia Code § 11-15A-1a. Therefore, the City is requesting specific authorization to impose both a municipal sales tax and a municipal use tax.

West Virginia Code § 8-1-5a requires a municipality participating in the Municipal Home Rule Pilot Program to either repeal or reduce its municipal B&O tax if it seeks to impose a municipal sales tax and by implication a municipal use tax. The City will on the date immediately preceding the effective date of the municipal sales and use taxes reduce by 50% the rate of municipal B&O tax on the tax classifications of Banking, Amusement, Wholesale Sales, and Manufacturing. A special revenue fund will be established and the revenues from these taxes will be deposited therein and expended for the capital improvement projects, to satisfy any debt service requirements established for securing funding for any of the capital improvement projects, and for any other purposes authorized by the City Council. The City currently has no intent to use the revenues funding personnel costs.

Justification. The City has developed plans for at least \$10,000,000 in capital improvements and equipment purchases. Attached is a listing of proposed capital improvement projects; however, the City reserves the right to add additional projects to the list, remove projects from the list, and use the revenues derived from the municipal sales tax and the municipal use tax in any other manner determined by the City Council, all without the necessity of filing an amended Application. The City seeks to use the Sales and Use Tax revenues to accomplish those improvements as well as other activities. The program will simply cease to exist without revenues.

**ATTACHMENT 1 TO
CITY OF NITRO
MUNICIPAL HOME RULE
PILOT PROGRAM PHASE II
APPLICATION**

**Possible Home Rule Projects To Be Accomplished By Use Of A
1% Municipal Sales Tax**

1. Acquire new telephone system for entire City government.

The current telephone system used by the City is antiquated and in need of replacement. The current system contains a specific number of portals through which connections are made to City telephones. There are an insufficient number of portals in the system and the addition of new telephones requires the addition of new telephone lines. Additionally, if any portal ceases to work and cannot be repaired, a new line must be run to the affected office; this situation is best demonstrated by the need for a new line to the City Recorder's office when the portal serving that office ceased to function.

As a result of the foregoing, a new telephone system is needed. However, the system must be capable of moving verbal and written communications as well as data transfers. Discussions with appropriate vendors indicate that the system will cost approximately \$72,000.

2. Acquire management software program to cover all City operations.

In the not too distant past, computers were said to be a management tool of the future. The future is here; however, the computer system used by the City is dated. It is difficult to maintain and upgrade. Regardless, the City is still required to maintain correct and current records for all aspects of administration.

Currently, the Fire Department, the Police Department, the Building Inspection Department and the Administration each maintain a different server for the purposes of budget, revenue and expense recordation, records maintenance, personnel scheduling, etc..

The City seeks to acquire a management software program to assist the administrative functions of City management: personnel records and management, budget preparation, revenue and expense functions, property inventory and management, and other activities. Additionally, the software needs to provide the necessary data for all City departments. It is entirely probable that new hardware (pc's, servers and routers) will also be needed as that equipment is also dated. Discussions with appropriate vendors indicate the software will cost well in excess of \$100,000. Until the actual software requirements are actually determined, it is difficult to calculate the cost of necessary hardware; it is probable that the cost will exceed the cost of the software.

3. Construct large storage facility at Public Works Department.

The City maintains the usual assortment of equipment and vehicles necessary to perform the multitude of City maintenance activities; the City has a maintenance building and appropriate personnel used for that purpose. However, when the vehicles and equipment are not in use, they are stored outside in the weather which causes them to deteriorate more rapidly, and the maintenance costs to keep the vehicles and equipment operational are increased.

To alleviate this situation, the City seeks to acquire a large structure which will be utilized for storing vehicles and equipment when not in use. As with other items on this list of proposed projects, the City has contacted various vendors to obtain approximate cost figures. It appears the cost to purchase and install the structure will be approximately \$100,000.

4. Purchase new street sweeper

The City's current street sweeper is a 1997 model which is out of service. The life of a street sweeper is about 6 years which is one of the reasons for the purchase of a new one; the current street sweeper is not only well past its useable life, it is not operational much of the time. The other reason for purchasing a new street sweeper is that under the City's existing WW/NPDES general permit registration, no. WVR030027, of its current MS4 program, street sweeping is one of the BMP requirements. This program is federally mandated without federal funding. The cost of a new street sweeper is \$180,000.

5. Purchase new garbage truck

Our current fleet of garbage trucks is 3 trucks: a 2002 model, a 2005 model and a 2009 model. The life expectancy of a garbage truck is approximately five years; two of the three trucks are well past the life expectancy. In order to maintain a professional level of service to the City's residents and businesses, at least one new garbage truck is needed to maintain that level of service. The cost of a new garbage truck is \$130,000.

6. Expand demolition of vacant and dilapidated buildings

Currently, there are many structures in the City that should be demolished. Those structures act as a magnet to kids and vagrants who want to find a place to "hang out" as well as possibly be involved in the drug culture. The City has enacted a vacant building ordinance in which the property owner is required to license the structure as a vacant building; there is a license fee which increases each year the structure remains vacant. In some instances, rather than obtain a license, the property owner may agree to have the structure demolished in order to prevent activities resulting in liability. When warranted, The City may demolish the structure and file a lien against the property that will be paid at some point in the future. The third alternative is for the City enter into an agreement with the property owner whereby the City forgives unpaid municipal fees and purchases the property, demolishes the structure and then sells the property to the highest bidder. Nitro needs additional revenues to pay for the activities. The extent of the program will depend on the amount of revenue available.

7. Expand concrete and blacktop paving throughout City.

Even though the City annually budgets for street paving, the amount available is not sufficient to keep up with the rising cost of materials. The City is in need of more funding to prevent the streets from further deterioration. This will provide a safer and higher quality of vehicular travel for our residents and visitors in the City. This is a long term project with the estimated cost being \$2,000,000.

8. Make sidewalks throughout the City ADA compliant and construct new sidewalks in certain areas

Many of our sidewalks throughout our town are deteriorated and none are ADA compliant. Additionally, most sidewalks at street corners are not ADA compliant. As a result, the sidewalks throughout the City are trip hazards and an inconvenience for those walking as well as for those with disabilities. In order to make the proper corrections and upgrades, substantial additional funding is needed. This is a long term project with the estimated cost being \$2,000,000.

9. Correct problems at Ridenour Lake.

There is a lake located within the city boundaries. This lake was originally created by the Army Corps of Engineers to control flooding and provide recreational opportunities. Fishing tournaments are held during the summer months. Additionally, shelters and a gazebo are available for picnics and may be rented for different private events. A dog park (the Bark Park) is also located at the lake.

Since its creation, the lake has not been maintained properly. As a result, there are issues that have to be addressed in order for the lake to remain a hub for social activities. While there are many corrective actions that are necessary, those actions will be indicated throughout this list of projects.

Dredge Lake - Currently, the lake is in need of being dredged. Over the years, sediment and mud resulting from storm water draining into the body of water has been allowed to develop to such an extent that deer are able to wade across the lake. Dredging of the lake is a necessity. \$600,000.00.

Settlement Pond - There is a settlement pond that serves as the place for capturing silt before it enters Ridenour Lake. The settlement pond has never been dredged and is now full of silt. This creates a situation where the silt drains into the Lake and as indicated above, the Lake is now also in need of dredging. We estimate the cost to dredge the settlement pond to be \$50,000.

Dike walls-Blakes Creek – Blakes Creek drains directly into the lake. Mud, silt and debris has accumulated to such an extent that the movement of water is substantially reduced. This can lead to some flooding, one of the primary causes for the construction of the lake. The waterway needs to be cleaned. \$200,000

10. Paving roads at Ridenour Lake

The roads around the lake are currently gravel, and during dry periods that gravel

results in a substantial amount of dust. Ridenour Lake is one of the City's primary places of recreation. It offers fishing, a dog park, shelters which may be rented for all types of events, and a beautiful gazebo that may be rented for weddings and receptions and other events. The Lake is also just a great place for relaxation, read a book or just lay around enjoying a sunny day. The current gravel roads create a nuisance for all of the activities listed above as well as for the surrounding residential neighborhoods. We estimate the cost to pave the roads to be \$230,000.

11. Renovate City swimming pool

The current municipal pool is approximately 50 years old, and is showing its age in a non-flattering manner. It has been patched and repaired numerous times. It currently has a nylon liner which covers the original concrete walls and base, but leak problems still remain. There is no ADA accessibility into the pool, there is a kiddie pool that is looked upon unfavorably, the bathhouse is in fair to poor condition, the restrooms and showers are not ADA compliant, the snack bar/kitchen violates many health codes and the plumbing is old and leaky.

However, use of the pool during the summer months remains quite high. Additionally, the pool is also used by some individuals who are not residents of Nitro. Consultants have determined that use of the pool by non-residents could be increased substantially if major renovations were to occur.

Because of the foregoing problem areas, the municipality would like to renovate and expand the pool facility and replace the swimming pool. Baker Engineering has drawn up plans for the project. This project is structured to occur through four phases that will occur over many years or if sufficient is available, it could all occur in one year. The cost of each phase is indicated.

Phase One (Highest priority 1-2 years)

Bathhouse and site improvements

1. Demolition	\$ 15,000
2. Bathhouse	\$630,000
3. A.D.A Accessible chair lift	\$ 5,000
4. Ornamental fencing	\$ 40,000
5. Sidewalks, concrete deck and misc. site work	\$ 75,000
6. Landscaping, enhancements and Pickleball court	<u>\$ 30,000</u>
Sub-total Phase 1	\$795,000

Phase 2 (Key to life of plan 3-4 years)

New splash pad and picnic shelter

1. Splash pad w/ pumps and filters	\$200,000
2. Picnic pavilion (shelter)	\$ 60,000
3. Water features allowance	\$ 85,000
4. New pool concrete decking	\$ 40,000
5. Shade canopies	\$ 20,000
6. Landscaping and misc. site work	<u>\$ 25,000</u>
Sub-total Phase 2	\$430,000

Phase 3 (Expanded services development 5-8 years)

Waterslide build out

- | | |
|------------------------------------|------------------|
| 1. Waterslides package | \$280,000 |
| 2. Misc. landscaping and site work | <u>\$ 10,000</u> |

Sub-total Phase 3 \$290,000

Phase 4 (Long term development 8-10 years)

Waterpark Development

- | | |
|---------------------|--------------------|
| 1. Demolition | \$ 75,000 |
| 2. New leisure pool | <u>\$1,425,000</u> |

Sub-total Phase 4 \$1,500,000

Grand Total \$3,015,000

12. Renovate public library.

Nitro has a public library that is independent from the Kanawha County Library System. It's funding is provided by the City. While it provides several programs to entice users into the facility, it is not without problems. Following is a list of problem areas that need to be addressed.

A. Make the Library ADA compliant

1. Make ramp leading to exterior door properly accessible.
2. Make ramp leading to book return properly accessible.
3. Pave parking lot. This parking area is used by the entire City in that it serves the library, City park, the handicapped children's playground, and the swimming pool. The parking area is gravel, so in summer, it's very dusty because people drive through all day. The area needs to be paved and have parking spots marked off. Estimated cost is \$250,000.00.
4. Provide and properly designate van accessible parking.
5. Provide and properly designate parking for disabled.
6. Make all parking spaces easily accessible.
7. Provide service counter of proper height.
8. Increase space between book stacks to proper size.
9. Provide magazine display at proper height.
10. Correct all deficiencies in the restrooms. The restrooms are outdated and everything needs to be replaced. The estimated cost for new sinks, commodes, etc., is \$2,000.

B. Expand library facility as necessary for ADA compliance and to include meeting room. The estimated cost is \$50,000.00.

C. Install new carpet, linoleum and tile where appropriate. Carpet and linoleum needs to be replaced. The linoleum in the entryway has holes in it and is stained and dirty. Carpet is coming up in some areas. Estimated cost is \$20,000.00.

D. Install new water fountain. The current water fountain has been here since the library was built. It is rusty and doesn't work some of the time. Estimated replacement cost is \$500.00.

13. Acquire facility to provide sufficient space for the Municipal Court.

After careful review, a determination was made that improvements are needed for the Nitro Municipal Court. Areas of concern that were examined were the size and configuration of the current court room, safety for court personnel and the ability to integrate and access older files in an efficient manner. Each year, changes are enacted that increase the activities that are the responsibility of the Municipal Court. Assistance during peak times is necessary to help meet these requirements.

The Municipal Court is currently utilizing the City of Nitro Council Chambers. Even on a "light" court date there is inadequate space for defendants in this "court room." Not only is there no space for a sufficient number of chairs for everyone, but with the booking process being conducted by the Nitro Police Department, which is adjacent to the Council Chambers, often times there are almost as many people waiting in the hallway as well as in the "court room."

In addition to the space issue, there is also a configuration problem. The room is configured specifically for Council meetings. Because the "desk" was custom built to allow the Council members to be seen and heard by the attendees at Council meetings, it is not as conducive for Municipal Court hearings. With an ultimate goal of utilizing more technology for improved records retention, the need to be able to properly configure the courtroom presents itself. Currently, the defense attorneys and defendants sit in close proximity to the Judge and the Municipal prosecutor.

As the nation looks to making itself more secure, an eye to better security for the courtroom exist. There is a bailiff at every Municipal Court proceeding. There have been several occasions where a defendant and/or a relative has gotten out of control. While additional security measures in the form of a wand or other type of metal detectors could be used, the primary method for securing the courtroom is the provision of appropriate space.

Records management and retention are quickly becoming major issues for the court. One of the goals of the Court is to convert the older files into a digital format. As a result of the fact that there is no additional space for storage in the Court Clerk's office for these files and due to the ever increasing number of files, the City has determined that the most appropriate method for accomplishing this project is to contract with a Records Management Company. Unfortunately, the Court receives request on a daily basis so the need for these files to be accessible exist. The digital format would enable quick access as well as enabling the hard copies to be boxed and stored off site.

Additionally, the City seeks to purchase a server for court records only. This would entail the development of a tower for the storage of various databases. The use of this technology would enable court personnel to access the information during court sessions without having to keep going in and out during the court session. The network would be a LAN and could be used with wireless capabilities.

The City is still studying the best method for locating the Municipal Court. For example, should it be in a free standing structure devoted only to that purpose or should it be in a multi-use structure and, if so, what other offices should also be located there. The City was given a two story building that even though expensive renovations are necessary, has "good bones." Discussions are taking place as to the use of the structure. If it is

used as the new Municipal Court area, renovations in excess of \$500,000 will be required. When the other necessary expenditures are included, the cost could be in excess of \$750,000.

Regardless, until the applicable decisions are made, the cost estimates cannot be made.

14. Construct new fire station at the Nitro Marketplace.

In addition to the shopping center and several restaurants at the Nitro Marketplace, the area also encompasses a greyhound race track, a casino, several hotels and several businesses, and a military reserve installation. A substantial area adjacent to the shopping center is planned for apartments, condominiums, and office structures. The City needs to start planning for the new Fire Department sub-station in the area, the additional fire apparatus and additional personnel required for its proper operation. With the further development of the Nitro Marketplace area, it will be necessary for the City to construct the Fire Department sub-station in the not too distant future. The City already has an acre of land in that area which should help to alleviate the cost. As this project is approximately 10 years into the future, accurate cost estimates are not possible.

15. Penwood Ave./Coalwood Ave. Trail.

Nitro is participating in a Trails Grant Project to get Nitro residents outside, walking and exercising so as to enjoy a healthier life style. This project is partially funded under State Project # U320-NIT/RO5.00. This is step number four of a four-step trails grant to complete a walking trail from Ridenour Lake to the downtown area of Nitro. The Nitro portion of the grant is \$100,000.

16. Construct City museum

The site of present day Nitro was selected by the Federal government in 1918 when it decided to construct a giant explosives plant capable of producing 700,000 pounds of gunpowder per day so as to provide needed supplies for the Army in World War I. The plant construction occurred over a 12 month period and was in operation for one month, and then the war ended. The City was subsequently incorporated and eventually became a chemical manufacturing center with many of the major chemical companies locating a plant adjacent to Nitro.

Because of its unique history, the City anticipates constructing a museum. Along with the currently existing antique shops in the City, it is anticipated that the museum will draw tourists into the area which will result in some economic development.

To date, blueprints have been completed and application has been made to the Internal Revenue Service to obtain tax exempt status under 26 U.S.C. 501(c)(3). Once tax exempt status is secured, a fund raising drive will commence. Also, a more reliable cost estimate will be developed. However, the fund raising drive could extend over a period of time before construction can commence. As a result, other sources of funding will need to be explored.

17. Acquire property for new police station and construct the building.

The current police station is in a leased area in the old privately owned high school across the street from City Hall. The area is insufficient in size and does not have space necessary for the police force.

Following is a list of the areas which should be included in a well run municipal police force.

- A. Records Division office and storage area
- B. 2 executive offices
- C. 4 supervisor offices
- D. Large patrol office area
- E. Bathroom/shower room
- F. Kitchen area
- G. Gym/workout area
- H. Booking/holding room
- I. Evidence room
- J. Firearms room
- K. Evidence processing room
- L. Provide necessary equipment upgrade

A new police station will not be inexpensive. It is estimated the cost could approach \$750,000.00, and possibly more.

18. Re-construct city park.

The current city park is in need of substantial redesign. The current design was developed over 50 years ago. There are many areas note worthy that should be addresses, such as: the inadequate vehicle parking on gravel parking lots that are quite difficult to maintain, the little league baseball areas are somewhat jammed together, and family areas are nonexistent. The redesign has been completed. The approximate cost is \$2,500,000.

19. Renovate A-1 carpet building.

This two-story structure was given to the City. While it will require renovation and repair, use of the structure continues to be studied. Some of the current thinking is that on-half of the first floor could be used by the Police Department; the other half of the first floor, if properly designed, could be used both for City Council chambers and the Municipal Court. The total cost is estimated to be approximately \$1,500,000.00.

20. New Community Center

The structure currently used as a community center is the old now privately owned high school. While it appears to be structurally sound, the operational costs continue to increase. Also, the interior is rather shabby. The citizens of Nitro deserve a better location where community events can be held. There are no estimated costs for this project at this time.

21. Construct RV/Camping area at the lake.

The City has determined that the lake area, subsequent to dredging, should be used as a means to attract tourists into the City. As many of the target group travel in campers and other types of RVs, a camping area by the lake would be appropriate. The estimated cost is \$850,000.

22. Construct physical fitness activity stations

The City is constructing a walking trail from the business district to and around the lake for the purpose of providing a means of outdoor exercise for Nitro residents. To assist in this endeavor, the City anticipates constructing physical fitness activity stations at intervals along the walking trail. There will also be walkways in the newly designed City park. The activity stations will be constructed at intervals there as well. These activity stations will not be expensive to install, and the estimated cost is \$2,500.00.

23. Construct indoor Recreation Area.

Residents of the City do not have any type of an indoor recreation center although there have been many requests for the provision of such a structure. The final design has not been determined because this project is approximately 10-12 years into the future. However, the current thinking is that the structure will house a basketball court, workout room, swimming pool, and an indoor track. Because this is so far in the future, a cost estimate has not been determined.

24. Purchase new public information sign.

The City has had great success utilizing a rented electronic sign (similar to those found along highways that provide information on road maintenance) to inform the public about up-coming community activities. The City will purchase one of these signs and use it for that purpose. The cost is estimated to be approximately \$40,000.

25. Construct Bank Street entry

Part of the City's Streetscape Program is the construction of an archway over the entry to the central business district. The City is seeking funding for this project. Even though this was incorporated into the initial Streetscape Program plans, It was learned this year that funding for this was no longer available. Therefore, the City must find the funding elsewhere. The projected cost is \$500,000.

26. Study need for new central fire station and if needed, construct.

Even though it is structurally sound, the current central fire station is old and in need of substantial repairs. The doors are not quite large enough and the newer trucks are difficult to park. The electrical system has been updated and the leaking roof repaired. However, looking to the future and growth in the City's boundaries, the issue of a new central fire station must be explored and if need, a new structure constructed.

27. Study need for a new City Hall or renovation of the current City Hall, and take appropriate action.

The current City Hall includes offices for the Mayor, City Recorder, City Treasurer, City Building Inspector, the offices where accounts are monitored and payments are recorded, and the Nitro Regional Wastewater utility. It is not sufficient in size when the expansion of the City is taken into consideration. For that matter, the structure is a little small for the current activities housed therein. The issue of a new or expanded City Hall must be explored.

28. Acquire marquee type of informational sign.

There is an area of the City, other than the central business district, where other businesses are located. However, most non-residents are not aware the businesses located in that area. The City seeks to acquire and install one large lighted Marquee at a specific location that demonstrates the businesses on Main Avenue. Estimated cost is approximately \$45,000.00.

29. Correct storm water drainage to prevent future flooding.

There is substantial flooding in Ward Four. A 48" storm water drainage system needs to be installed from the Route 25 restaurant down to Walker Street, down Walker Street and under the railroad tracks to the river. This project would cure current and future storm water drainage problems. The estimated cost would be in the millions of dollars.

**ATTACHMENT 2 TO PROBLEM 4
CITY OF NITRO, WEST VIRGINIA
Feasibility Analysis of Imposing Sales and Use Taxes**

EXECUTIVE SUMMARY

Current financial resources available to the City of Nitro, West Virginia, are not adequate to fund anticipated needs of the City. Some of these needs include:

\$ 1,915,227 to fund pension and other liabilities of the City
\$10,000,000 to fund needed infrastructure improvements

Growth in the General Revenue Fund in recent years has been stagnate or is declining:

Fiscal Year	B & O Tax Collections	Total General Revenue Fund
2013	\$1,476,168	\$5,560,304
2012	\$1,405,550	\$6,251,411
2011	\$1,311,960	\$5,492,343
2010	\$1,491,388	\$5,186,770
2009	\$1,330,601	\$5,302,146

The City has few options available to it to meet these revenue needs, and the City has determined that the better option available is to impose sales and service tax and compensating use taxes at the 1% rate.

DISCUSSION

A. Current Revenues

The City has imposed a business and occupation tax since 1975. The rates of tax are at or below the maximum rates allowed by W. Va. Code § 8-13-5. The chart below compares the maximum rates allowed by law with the City's current rates, which in several classifications are below the maximum rate allowable under State law.

Classification	Rate per \$100 Gross Receipts	
	Maximum Rate	City Rate
Production		
Coal	1%	0.8%
Sand & gravel (not mined or quarried)	3%	2.4%
Oil, blast furnace slag	3%	0%
Natural gas in excess of \$5,000	6%	2.4%
Limestone or sandstone quarried or mined	1.5%	1.2%
Timber	1.5%	0%
Other natural resource products	2%	1.6%
Manufacturing	0.3%	2.4%
Business of selling tangible property		
Retailers	0.5%	0.4%
Wholesalers	0.15%	0.12%

Public service or utility business		
Electric light and power companies (sales and demand charges, domestic purposes & commercial lighting)	4%	4.0%
Water companies	4%	4.0%
Electric light and power companies (all other sales & demand charges)	3%	0%
Natural gas companies, Toll bridges	3%	3.0%
All other public service or utility business	2%	2.0%
Contracting	2%	2.0%
Amusements	0.5%	0.4%
Service business or calling	1%	0.8%
Rentals, royalties, fees or otherwise	1%	0.8%
Small loan and industrial loan businesses	1%	0%
Banking and other financial business	1%	1.0%
Certain health maintenance organizations	0.5%	0%
Business of aircraft repair & maintenance	0.1%	0%

Note: The maximum rates allowed by State law are the primary State business and occupation tax rates in effect on January 1, 1959. W. Va. Code § 11-13-25.

In addition to the business and occupation tax, the City imposes:

1. Ad valorem property taxes on real and personal property for municipal purposes within the limitations and subject to the classifications prescribed by the constitution and the general law of this State as provided in W. Va. Code § 8-13-1.

	2014 Levy Rate	Maximum Rate
Class II Property		
Regular levy rate	0.2016%	0.25%
Excess levy rate	0.088%	0.125%
Bonded indebtedness	NA	NA
Class IV Property		
Regular levy rate	0.4932%	0.50%
Excess levy rate	0.176%	0.25%
Bonded indebtedness	NA	NA

Note: Excess levies and levies for general obligation bonds require approval by at least 60% of those voting for and against the levy. W. Va. Const. Art. X, § 1. An excess levy may remain in place for up to five years, W. Va. Const. Art. X, § 11, and may be renewed upon favorable vote of the people.

2. A 6% hotel occupancy tax, which may only be spent for purposes specified in W. Va. Code § 7-18-14.

3. A 2% public utilities tax pursuant to W. Va. Code § 8-13-5a.

4. A 2% amusement tax pursuant to W. Va. Code § 8-13-6.

5. A 5% tax on purchases of intoxicating liquors in the municipality pursuant to W. Va. Code § 8-13-7.

6. Fees from licensed private clubs located in the municipality as authorized in W. Va. Code § 60-7-7 of the Code and W. Va. Code § 8-13-7.

7. Special charges for municipal services as provided in W. Va. Code § 8-13-13.

8. Municipal Service Fee - \$25.00 per residence or commercial structure per month.

B. Proposed Sales and Use Taxes

Sales tax would be levied on all sales of tangible personal property and custom software made within the municipality and on the furnishing within the municipality of taxable services upon which the State consumers sales and service tax is collected, with limited exceptions.

However, municipal sales taxes may not apply to:

1. Any transaction that is exempt from the State consumers sales and service tax.

2. Sales of motor vehicles upon which the tax imposed by W. Va. Code § 11-15-3c is paid.

3. Sales of motor fuels upon which the taxes imposed by W. Va. Code § 11-14C-1 *et seq.* are paid.

4. Sales the municipality is prohibited from taxing by federal law, *e.g.*, satellite television service is subject to State sales tax but exempt from municipal sales taxes.

The municipal sales and use taxes would be administered, collected and enforced by the Tax Commissioner, at the same time and in the same manner as the State consumers sales and service tax and use taxes are administered, collected and enforced by the Tax Commissioner.

1. Large vendors remit tax monthly to the Commissioner by the 20th day of the month following the month in which the tax is collected, except for taxes collected in December each year that are due at the end of January of the next calendar year.

2. Very small vendors remit tax annually to the Commissioner by the end of January following the calendar year in which the tax was collected.

3. All other vendors remit tax to the Commissioner on a quarterly basis, by the 20th day of the month following the close of the calendar quarter, except for the fourth quarter which is due at the end of January.

4. Purchaser use taxes are remitted at the same time as sales taxes are remitted

to the Commissioner.

The Tax Commissioner will charge an annual fee for his services, which may not exceed 5% of net collections per fiscal year. We have assumed that the fee will be 5% of net collections.

Quarterly, the State Treasurer will remit to the City the amount of tax in the City's subaccount established in the State treasury pursuant to W. Va. Code § 8-13C-7.

Note: When B & O taxes are reduced in order to impose a sales tax, the effective date of the B & O tax reduction and the date when the City will begin to receive sales tax collections need to be coordinated in order to avoid a budget shortfall. See *discussion infra*.

C. Special Fund Doctrine

Municipal sales and use tax receipts will be deposited in a special revenue fund rather than in the municipality's general revenue fund. This will provide the municipality with some spending flexibility.

Under the Special Fund Doctrine recognized by the Supreme Court of Appeals, monies in the special fund can be used to pay debt service on revenue bonds and the fund can be pledged as security for the revenue bonds. See, e.g., *Winkler v. State School Bldg. Authority*, 189 W. Va. 748, 434 S.E.2d 420 (1990).

D. Imposing both Sales and Use Taxes

Under W. Va. Code § 8-1-5a(k)(6), municipalities participating in Phase II of the Municipal Home Rule Pilot Program may not adopt any new taxes, except that they may be allowed to impose a sales tax, at a rate not to exceed 1%, if they reduced their business and occupation tax.

The language in W. Va. Code § 8-1-5a(k)(6) does not contain an explicit reference to a companion use tax. It is our understanding that it is the Tax Commissioner's position that the language in West Virginia Code § 8-1-5a(k)(6) allows municipalities to impose both a sales tax and a use tax. Should the Board allow the City to impose a 1% sales tax, we request that the Board expressly authorize the City to also impose a 1% compensating use tax.

E. Estimate of Sales and Use Tax Collections

The population of the municipality as of the 2010 census was more than 7,178 persons. The primary retail shopping areas for these residents are primarily located within the municipality. We recognize, however, that there are shopping areas to the East, West, and South of the municipality that may be visited by Nitro's residents. At the same time we recognize that businesses within the municipality also draw shoppers from outside the municipality. We do not believe imposing a 1% sales tax will significantly erode sales within the municipality.

During the most recent calendar year of the City, gross receipts of more than \$ 210,083,627 was reported under the retail classification of the municipality's business and occupation tax. While gross receipts reported under the retail classification of the business and occupation tax and gross proceeds subject to the proposed sales and service tax will not be the same for many reasons, gross receipts reported under the retail classification of the business and occupation tax less gross receipts attributable to (1) sales of groceries, (2) sales of motor fuels, (3) sales of motor vehicles, and (4) sales of prescription drugs, are an indicator of taxable gross proceeds of sales subject to the proposed sales and use taxes and are a good indicator of the proposed sales tax base.

Revenue Projections

Calendar Year	Sales Tax Revenue	B & O Tax Reduction	Net Effect
2014	\$	\$	\$
2015	\$254,967	\$12,739	\$242,228
2016	\$1,019,866	\$50,956	\$968,910
2017	\$1,019,866	\$50,956	\$968,910
2018	\$1,019,866	\$50,956	\$968,910

Currently, sales and use taxes are imposed by the Cities of Charleston, Harrisville, Huntington, Rupert, Wheeling and Williamstown. However, the taxes imposed by Charleston, Harrisville and Wheeling have been collected by vendors only since October 1, 2013, and insufficient collection data exists to be useful for purposes of this feasibility study. Officials in Huntington, Rupert and Williamstown were contacted to discuss the amount of revenues generated annually by their respective sales and use taxes and whether actual revenue are exceeding initial expectations. The responses were positive.

It is essential that a municipality that imposes a sales tax also be able to impose a use tax. There are two reasons for this. First, unless the municipality also imposes a use tax, then when State use taxes are paid, because West Virginia sales tax was not paid at the time the tangible personal property, custom software or taxable service was purchased, no use tax will be collected for the municipality in which the purchaser is located. West Virginia requires out-of-state vendors to collect West Virginia use tax when the out-of-state vendor is a retailer maintaining a place of business in this State and when the out-of-state business registers to collect tax under the Streamlined Sales and Use Tax Project. This type of collection will likely become more important should Congress enact legislation such as the Main Street Fairness Act.

For example, retailers with a physical presence in West Virginia are required to collect West Virginia state and local sales and use taxes when customers in West Virginia purchase goods and services over the Internet, by mail order or by telephone. Unless the municipality is also authorized to impose a use tax, these retailers will only collect State sales and use taxes when they sell goods and services delivered to customers located within the City of Nitro.

Second, situations will arise where the vendor collects West Virginia sales tax at the time of sale because the sale will be completed in West Virginia, but the vendor does not collect municipal sales tax because the transaction is sourced to a West Virginia municipality other than the municipality in which the storefront is located. In this

situation, the business purchaser of the item would owe the municipality's use tax or the vendor may be required to collect the use tax because the vendor is a "retailer engaging in business within the municipality imposing the use tax."

F. Administration of Municipal Sales and Use Taxes

West Virginia law requires that there be state level administration of municipal sales and use taxes, see W. Va. Code § 11-15B-33, and that there be uniformity of state and local sales and use tax bases, see W. Va. Code § 11-15B-34.

Consequently, the municipality will have no role in the administration, collection and enforcement of the proposed sales and use taxes and there will be no administrative costs to the municipality.

G. Vendor Compliance Learning Curve

State and municipal sales and use taxes are collected employing what are known as destination sourcing rules, which are set forth in W. Va. Code §§ 11-15B-14, 11-15B-14a and 11-15B-15.

1. In general, if the customer takes delivery of the tangible personal property, custom software or results of the taxable service at the business location of the vendor, e.g., the storefront, the State and local sales/use taxes applicable to that location apply.

2. When delivery does not occur at the vendor's business location, the State and local sales taxes applicable to the transactions are generally those applicable to the location where the purchaser or the purchaser's donee takes delivery of the goods or results of the taxable service.

Businesses located in border areas of the State, such as Huntington, Parkersburg and Wheeling, that sell and deliver to customers located outside West Virginia are already familiar to some degree with the destination sourcing rules for purposes of collecting West Virginia sales and use taxes. Applying the destination sourcing rules will likely be a new experience for many vendors currently selling goods and furnishing services within the City of Nitro. Our revenue projections take this learning curve into consideration.

H. Boundary Database

A municipality imposing a sales tax will need to provide the Tax Commissioner with a rate and boundary database. To build the database, the municipality will need to know (1) the location of its boundaries, (2) the five-digit zip codes located in whole or in part in the municipality, and (3) the nine-digit zip codes located in whole or in part within the municipality imposing the sales tax.

The City of Nitro has one 5-digit zip codes located in whole or in part within the City – 25143. If authorized to impose sales and use taxes, we anticipate being able to quickly develop the necessary rate and boundary database and to maintain that database.

I. Coordination of B & O Tax Reduction and Sales and Use Tax Receipts

Committee Substitute for Senate Bill 435 (2013) requires that the municipality reduce its business and occupation tax in order to impose a sales tax. Because the municipality's B & O tax is deposited in its general revenue fund and the municipality is required to have a balanced budget, the municipality will need to carefully coordinate the timing of B & O tax reductions and their effect on B & O tax collections and when the municipality will begin to receive sales use tax revenues from the State.

J. Proposed Reduction in Business and Occupation Taxes

W. Va. Code § 8-1-5a(k)(6) provides that a municipality participating in the Municipal Home Rule Pilot Program may not impose a sales tax pursuant to its home rule authority unless the municipality reduces its business and occupation tax.

As the chart on pages 1 and 2 of this document indicate, the business and occupation rates imposed by the City of Nitro are in many instances below the maximum rates allowed by State law.

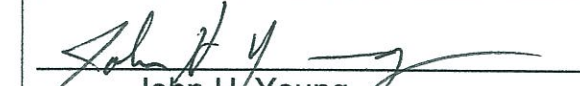
To comply with the requirement of Section 8-1-5a(k)(6), the City is proposing to further reduce the rates of business and occupation tax imposed on the banking, amusement, manufacturing, and wholesale sales classifications.

Classification	Current Rate	Proposed Rate
Banking	1%	0.5%
Amusements	0.4%	0.2%
Manufacturing	0.24%	0.12%
Wholesale	0.12%	0.06%

These reductions would reduce the City's business and occupation tax collections by \$ 50,956 per year and would be implemented as discussed in paragraph I above.

CONCLUSION

As the preceding discussion demonstrates, It is feasible for the City of Nitro, West Virginia, to reduce its business and occupation taxes by \$50,956 per year and impose sales and use taxes at a rate of 1% that is expected to generate net revenue in excess of \$ 1,019,866 per year. The net additional revenue will be used primarily for three purposes: (1) to replace the reduction in business and occupation tax collections due to the proposed business and occupation tax reductions; (2) to shore up the City's pension plans, and (3) to make necessary capital improvements.



John H. Young
City Treasurer
P.O. Box 308
Nitro, WV 25143

PROBLEM 4
FISCAL IMPACT WORKSHEET FOR PROBLEM AND PROPOSED SOLUTION

Municipality: Nitro, West Virginia

Person who prepared fiscal statement: John E. Montgomery
Telephone number: (304) 776-6458
Email address: montysmob@frontier.com

Problem Number: 4

Category of Issue:

Tax Organization Administration Personnel

Type of Solution:

Ordinance Act Resolution Rule Regulation

A. Fiscal Note Summary

1. Summarize in a clear and concise manner what impact this solution would have on costs and revenues of the municipality if the proposed solution is implemented as written.

This proposal would enact a municipal sales and service tax and a municipal use tax. As indicated in the Feasibility Study, the taxes will raise \$968,910 in municipal revenues. As the City is required to use the services of the West Virginia State Tax Department for collection of these taxes, and aside from the fact that the West Virginia State Tax Department will impose a fee not to exceed 5% of the taxes so raised, there should be very little in the way of additional expenses.

2. Summarize in a clear and concise manner what impact this solution would have on residents and/or persons doing business in the municipality if the proposed solution is implemented as written.

All residents and/or persons doing business in the City and who qualify as vendors for purposes of the West Virginia Consumer Sales and Service Tax and the West Virginia Use Tax would be required to collect and remit to the State Tax Department the 1% municipal sales and service tax and the 1% municipal use tax.

B. Fiscal Impact Detail – Nitro

Show overall effect in Item 1 and in Item 2 or 3.
In Item 4, explain the numbers entered in Items 1 and 2 or 3.

Effect of Solution	First Fiscal Year In Which Implemented	Second Fiscal Year
---------------------------	---	---------------------------

1. Estimated Total Cost	0	0
a. Personal Services	0	0
b. Current Expenses	0	0
c. Repairs & Alterations	0	0
d. Assets	0	0
e. Other	0	0
2. Estimated Total Revenue Gain	<u>\$968,910</u>	<u>\$968,910</u>
3. Estimated Total Revenue Loss	<u>\$108,401</u>	<u>\$108,401</u>

4. Explanation of How Estimates Were Determined. Include the formula used or attach the worksheet.

Each business in Nitro operating under either the municipal B&O tax Retail classification or the municipal B&O tax Service Business or Calling classification was analyzed to determine the gross receipts for retail sales and services, the estimated amount of those gross receipts that would be exempt from the sales and service tax, so as to determine the sales of tangible personal property and taxable services that would be subject to the sales and service tax. The amount subject to the sales and service tax was multiplied by 1% and that resulting amount was determined to be the Estimated Total Revenue Gain.

The Estimated total Revenue Loss is the combination of the reduction of the municipal B&O tax and the maximum fee amount that can be retained by the State Tax Department.

The City looked at the cost categories above. At this time, the City is not aware of any additional costs that may be attributed to this proposal.

C. Community Assessment – Estimated Impact of Solution on Residents and Businesses During First Full Fiscal Year of Operation.

1. What groups will be affected by this solution?

All purchasers making purchases in Nitro of tangible personal property and taxable services. Vendors of tangible personal property and providers of taxable services.

2. What will be the impact(s) on these groups?

Purchasers will be required to pay the municipal sales and service tax to the vendors and service providers. Vendors will be required to collect and remit to the State Tax Department the municipal sales and service tax.

3. What evidence was used to form this opinion view?

The municipal sales and service tax is required to be administered in the same manner

as the West Virginia Consumers Sales and Service Tax. The West Virginia Consumers Sales and Service Tax establishes the requirements that result in the foregoing impacts.

4. What plans do you have, if any, to mitigate any negative impacts identified?

There are no plans to mitigate the foregoing impacts.

D. Additional Information.

There is no additional information.

PROBLEM

5. AUTHORITY TO REDUCE SPEED LIMITS ON STATE ROADWAYS WITHIN MUNICIPAL BOUNDARIES. (ADMINISTRATIVE)

Background:

With certain limitations, all cities have plenary power and authority to provide for the government, regulation and control of the city's municipal affairs, including, but not limited to, the following: . . . "The government, protection, order, conduct, safety and health of persons or property therein." W. Va. Code § 8-12-2(a)(9)

With certain limitations, all municipalities have plenary power and authority "(4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality, . . . (13) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome; . . . [and] (23) To provide for the elimination of hazards to public health and safety[.]" W. Va. Code § 8-12-5

However, under chapter 17C of the West Virginia Code, the authority of municipalities to set and/or change speed limits is both confusing and conflicting. To illustrate:

1. "Local authorities" is defined in W. Va. Code § 17C-1-34 (1963) and means "every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state."

2. The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter." W. Va. Code § 17C-2-7 (1951) (uniformity of provisions of chapter throughout state)

3. "The provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from: * * * (10) Altering the speed limits as authorized herein; [and] (11) Adopting such other traffic regulations as are specifically authorized by this chapter." W. Va. Code § 17C-2-8(a) (1963) (powers of local authorities)

4. "No ordinance or regulation enacted under subdivisions (4), (5), (6), (7), or (10), of subsection (a) of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrance to the highway or part thereof affected as may be most appropriate." W. Va. Code § 17C-2-8(c).

5. "Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the speed permitted under this chapter at any intersection is greater than is reasonable or safe under the conditions found to exist at such intersection, such local authority subject to subsection (e) of this section shall determine and declare a reasonable and safe speed limit thereat, which shall be effective at all times or during hours of daylight or darkness or at such other

times as may be determined when appropriate signs giving notice thereof are erected at such intersection or upon the approaches thereto." W. Va. Code § 17C-6-3(a) (1951; 1998) (local authorities may alter speed limits at intersections when speed is greater than is reasonable or safe).

6. "Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the speed under this chapter upon open country highway outside a business or residence district is greater than is reasonable or safe under the conditions found to exist upon such street or highway, the local authority may determine and declare a reasonable and safe limit thereon but in no event less than thirty-five miles per hour and subject to subsection (e) of this section, which reduced limit shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway." W. Va. Code § 17C-6-3l (local authorities may decrease 55-mile per hour speed limit).

7. "A municipality may in its discretion, but subject to subsection (e) of this section, authorize by ordinance lower speeds than those stated in subdivision (2), subsection (b), section one of this article upon local dedicated rights-of-way in a residential district or portions thereof, which lower speed shall be effective at all times or during hours of daylight or at such other times as may be determined when signs are erected giving notice of the authorized speed." W. Va. Code § 17C-6-3(d) (authority to decrease 25-mile per hour speed limit)

8. "Alteration of limits on state highways or extensions thereof in a municipality by local authorities shall not be effective until such alteration has been approved by the commissioner of highways. W. Va. Code § 17C-6-3(e).

9. State law provides that "No person may drive a vehicle on a highway at a speed greater than is reasonable and prudent under the existing conditions and the actual and potential hazards. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highways in compliance with legal requirements and the duty of all persons to use due care. W. Va. Code §17C-6-1(a).

10. Posted speed limit signs on State roads are a guide to what the Commissioner of Highways believes is the reasonable and prudent speed for that stretch of road.

Problem: In the City of Nitro, and we suspect in other municipalities throughout the State, State established limits sometimes pose a danger to the public health, welfare and safety of both residents and nonresidents of the City. Locally elected officials, including the governing body of the City, are more aware of facts and circumstances that constitute a danger to the public health, welfare and safety in their City and should be allowed to determine the most appropriate speed limits for all State and local roads within the boundaries of their municipality, except for Interstate highways. Unfortunately, as previously stated, the authority of cities in this area is both confusing and often conflicting. Moreover, W. Va. Code § 17C-6-3(e) specifies that an "alteration of limits on state highways or extensions thereof in a municipality by local authorities shall not be effective until such alteration has been approved by the commissioner of highways."

Simply put, this statutory provision does not work. In our experience.

The City has submitted to the Highways Division three different requests to reduce the speed limit on a specific portion of State Route 25 which goes through the City. The response to each request stated that a study was necessary; to date, no other information has been provided to the City. Additionally, the Commissioner of Highways may disregard the views of the municipality and decide that the current speed limit is appropriate, and deny the request for a reduced speed limit.

As indicated above, a speed limit may create a public safety hazard. A prime example is a new church with at least 400 members has opened and the parking lot is adjacent to and empties on to State Route 25. Additionally, there is within one-half of a mile another large church with an even larger congregation. Furthermore, approximately one-quarter of a mile in the opposite direction from the new church is the new Nitro-St. Albans bridge which carries a rather substantial traffic load, a large portion of which also goes through the area of the two churches. There are other businesses and residential housing located in the area, both of which can create unsafe driving conditions, especially where the parking is headed-in to the business and the vehicles must back out on to the roadway when leaving. The traffic load is compounded by the 18-wheel tractor-trailers and tank trucks that travel the roadway in that area.

Summary of proposed solution: The City requests authority to reduce speed limits on State highways going through the City, upon the basis of an engineering and traffic investigation, and to have such reductions become effective upon the effective date of an appropriate ordinance

Justification:

Municipalities and the governing bodies thereof have a statutory duty to protect the public health, safety and welfare of its citizens. Two statutes read, in relevant part:

§8-12-2. Home rule powers for all cities.

(a) In accordance with the provisions of the "Municipal Home Rule Amendment" to the constitution of this state, and in addition to the powers and authority granted by (i) such constitution, (ii) other provisions of this chapter, (iii) other general law, and (iv) any existing charter, any city shall have plenary power and authority by charter provision not inconsistent or in conflict with such constitution, other provisions of this chapter or other general law, or by ordinance not inconsistent or in conflict with such constitution, other provisions of this chapter, other general law or any existing charter, to provide for the government, regulation and control of the city's municipal affairs, including, but not limited to, the following:

* * *

(9) The government, protection, order, conduct, safety and health of persons or property therein[.] (1937; 1969).

§8-12-5. General powers of every municipality and the governing body thereof.

In addition to the powers and authority granted by: (i) The Constitution of this state; (ii) other provisions of this chapter; (iii) other general law; and (iv) any charter, and to the extent not inconsistent or in conflict with any of the foregoing except special legislative charters, every municipality and the governing body thereof shall have plenary power

and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

* * *

(4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality, including the naming or renaming thereof, and to consult with local postal authorities, the Division of Highways and the directors of county emergency communications centers to assure uniform, nonduplicative addressing on a permanent basis;

* * *

(13) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome; * *

* * *

(23) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;

* * *

(44) To protect and promote the public morals, safety, health, welfare and good order[.]

The governing body of a municipality can provide a more rapid response to speed limit public safety issues as they arise and, therefore, should have the authority to make necessary changes under their police powers. New and expanding businesses and new and expanding residential neighborhoods often result in changing traffic patterns and in the creation of new actual and potential road hazards jeopardizing the public health, welfare and safety.

State law provides that "No person may drive a vehicle on a highway at a speed greater than is reasonable and prudent under the existing conditions and the actual and potential hazards. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highways in compliance with legal requirements and the duty of all persons to use due care. W. Va. Code §17C-6-1(a) (emphasis added). State law does not define the phrase "reasonable and prudent under the existing conditions and the actual and potential hazards."

State law provides that "Where no special hazard exists that requires lower speed for compliance with subsection (a) of this section, the speed of any vehicle not in excess of the limits specified in this section or established as authorized in this section is lawful, but any speed in excess of the limits specified in this subsection or established as authorized in this section is unlawful." W. Va. Code § 17C-6-1(b). The following speed limits apply:

1. Fifteen miles per hour in a school zone during school recess or while children are going to or leaving school during opening or closing hours. A school zone is all school property, including school grounds and any street or highway abutting the school grounds and extending one hundred twenty-five feet along the street or highway from the school grounds. The speed restriction does not apply to vehicles traveling on a controlled-access highway which is separated from the school or school grounds by a fence or barrier approved by the division of highways;

2. Twenty-five miles per hour in any business or residence district; and

3. Fifty-five miles per hour on open country highways, except as otherwise provided by this chapter.

The speeds set forth in this section may be altered as authorized in sections two and three of this article. W. Va. Code § 17C-6-1(b).

Conclusion

The reality is, however, that under some circumstances the speed limits in W. Va. Code § 17C-6-1(b) are excessive and pose a danger to the public health, welfare and safety that municipalities and the governing bodies thereof are charged with protecting. For this reason, municipalities ought to have the authority to address dangerous and excessive speed limits

**PROBLEM 5
FISCAL IMPACT WORKSHEET FOR PROBLEM AND PROPOSED SOLUTION**

Municipality: Nitro, West Virginia

Person who prepared fiscal statement: John Montgomery

Telephone number: (304) 776-6458

Email address: montysmob@frontier.com

Problem Number: 5

Category of Issue:

Tax Organization Administration Personnel

Type of Solution:

Ordinance Act Resolution Rule Regulation

A. Fiscal Note Summary

1. Summarize in a clear and concise manner what impact this solution would have on costs and revenues of the municipality if the proposed solution is implemented as written.

The City requests authority to enact an ordinance that authorizes the City to reduce the speed limits on State highways, not including the Interstate, going through the City. There should be no impact on either costs or revenues of the City if this proposed solution is implemented.

2. Summarize in a clear and concise manner what impact this solution would have on residents and/or persons doing business in the municipality if the proposed solution is implemented as written.

All motor vehicle drivers transiting the area would be required to proceed at a reduced rate of speed.

B. Fiscal Impact Detail – Nitro

Show overall effect in Item 1 and in Item 2 or 3. None.

In Item 4, explain the numbers entered in Items 1 and 2 or 3. None.

Effect of Solution	First Fiscal Year In Which Implemented	Second Fiscal Year
1. Estimated Total Cost	<u>200.00</u>	<u>50.00</u>
a. Personal Services	<u>0</u>	<u>0</u>
b. Current Expenses	<u>0</u>	<u>0</u>

c. Repairs & Alterations	200.00	50.00
d. Assets	0	0
e. Other	0	0
2. Estimated Total Revenue Gain	0	0
3. Estimated Total Revenue Loss	0	0

4. Explanation of How Estimates Were Determined. Include the formula used or attach the worksheet.

There is no change in operations or administration other than reduction of the speed limit. However, any actual cost would be the cost of new speed limit signs; four signs at a cost of \$50.00 each. It is estimated that a sign may have to be replaced due to damage by vandals.

C. Community Assessment – Estimated Impact of Solution on Residents and Businesses During First Full Fiscal Year of Operation.

1. What groups will be affected by this solution?

All drivers on the designated portions of the State roads will be affected. Additionally, all businesses adjacent to those roads will be affected because improved safety will result in a more positive commercial environment.

2. What will be the impact(s) on these groups?

They will be required to drive slower.

3. What evidence was used to form this opinion view?

Drivers are required to not exceed the speed limit. Therefore, if the speed limit is reduced, the drivers should drive slower.

4. What plans do you have, if any, to mitigate any negative impacts identified?

There are no plans to mitigate any negative impacts.

D. Additional Information

There is no additional information.

PROBLEM

6. SALE OF MUNICIPAL PROPERTY OUTSIDE OF THE AUCTION PROCEDURE. (ADMINISTRATIVE)

Background.

All cities have authority to sell property at public auction.

§8-12-18. Sale, lease or disposition of other municipal property.

...

(b) In all other cases involving a sale, any municipality is hereby empowered and authorized to sell any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration, the property to be sold at public auction at a place designated by the governing body, but before making any sale, notice of the time, terms and place of sale, together with a brief description of the property to be sold, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the municipality. The requirements of notice and public auction shall not apply to the sale of any one item or piece of property of less value than one thousand dollars[.]

Problem:

The term "auction" is defined in West Virginia Code § 18-2C-1.

(b) The term "public auction" means any public sale of real or personal property when offers or bids are made by prospective purchasers and the property sold to the highest bidder.

While property is required to be sold to the highest bidder at a public auction, the highest bid does not necessarily mean that the property is sold at its actual value. Additionally, the seller is required to pay to the auctioneer a commission that is based on the sales price established by the highest bid.

As provided in Section 8-12-18, except where the value of the item or piece of property to be auctioned is less than \$1,000, the City is required to publish by Class II legal notice a description of the property to be auctioned, and where and when the auction will take place.

Class II legal advertisements are published once a week for two successive weeks in a qualified newspaper of general circulation in the municipality, West Virginia Code § 59-3-2(a). The rate the newspaper may charge for the publication is established in Section 59-3-3.

When the foregoing is read in *pari material*, it is entirely probable that after payment of the necessary expenses and the highest bidder making a less than a fair market bid, the City will actually receive very little revenue from the auction.

Proposed Solution:

The City requests authority to enact an ordinance to establish the procedure for selling

City owned property valued at less than \$10,000 without going through the auction process. The ordinance would provide the procedure for establishing the value of the property being sold. For example, the sale price of any motor vehicle may not be less than the "average loan" value, as published in the most recent available eastern edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, if the value is available; if the fair market value of the vehicle is less than the N.A.D.A. "average loan" value, the vehicle may be sold for less than the "average loan" value. The fair market value shall be based on a thorough inspection of the vehicle by an employee of the City who shall consider the mileage of the vehicle and the condition of the body, engine and tires as indicators of its fair market value. If no fair market value is available, the City would set the price to be paid with due consideration given to current market prices.

Justification:

Municipalities are now required to stretch every dollar and maintain the lowest possible level of expenses. The selling of municipal property should also be subject to those requirements. Rather than sell property to the highest bidder but for a price that could be considerably less than the actual value of the property, and to then pay an auctioneer a commission for that activity, it is more appropriate to sell the property for its value as established through set but restrictive procedures. That is the purpose of this proposal.

PROBLEM 6
FISCAL IMPACT WORKSHEET FOR PROBLEM AND PROPOSED SOLUTION

Municipality: Nitro, West Virginia

Person who prepared fiscal statement: John E. Montgomery
Telephone number: (304) 776-6458
Email address: montysmob@frontier.com

Problem Number: 6

Category of Issue:

Tax Organization Administration Personnel

Type of Solution:

Ordinance Act Resolution Rule Regulation

A. Fiscal Note Summary

1. Summarize in a clear and concise manner what impact this solution would have on costs and revenues of the municipality if the proposed solution is implemented as written.

West Virginia Code § 8-12-18 requires all municipalities when selling municipal property to do so by auction to the highest bidder, even if that procedure does not provide the highest return to the municipality. Nitro seeks authority to enact an ordinance for the sale of property with a value less than \$10,000 without using the auction procedure.

This will allow the City to dispose of property without paying a commission to the auctioneer and to probably receive a higher return on the sale. Once it has been determined that specific property is to be disposed of, the City can establish the value and proposed sale price, make appropriate legal advertisements, and proceed to sale the property. As a result, the expenses of the sale will be reduced and the revenue received from the sale would be increased. Additionally, because property can be sold on a more scheduled basis, the requirements of listing the property for purposes of liability insurance will be reduced which should reduce the annual insurance premium.

2. Summarize in a clear and concise manner what impact this solution would have on residents and/or persons doing business in the municipality if the proposed solution is implemented as written.

Any impact on residents and/or persons doing business in Nitro would be negligible.

B. Fiscal Impact Detail – Nitro

Show overall effect in Item 1 and in Item 2 or 3.

In Item 4, explain the numbers entered in Items 1 and 2 or 3.

Effect of Solution	First Fiscal Year In Which Implemented	Second Fiscal Year
1. Estimated Total Cost	<u>250</u>	<u>250</u>
a. Personal Services	<u>0</u>	<u>0</u>
b. Current Expenses	<u>250</u>	<u>250</u>
c. Repairs & Alterations	<u>0</u>	<u>0</u>
d. Assets	<u>0</u>	<u>0</u>
e. Other	<u>0</u>	<u>0</u>
2. Estimated Total Revenue Gain	<u>500</u>	<u>500</u>
3. Estimated Total Revenue Loss	<u>0</u>	<u>0</u>

4. Explanation of How Estimates Were Determined. Include the formula used or attach the worksheet.

The cost figure is derived from calculating the cost of legal notices. The value can generally be determined by City employees located at the City garage. If City property is to be sold, it is generally very low in value; i.e., a three year old police cruiser with high mileage and a blown engine. The revenue to be gained would be the price a buyer is willing to pay, so long as it is reasonably close to the value as determined by the City. There should be no revenue loss and the revenue gain is whatever is derived from the sale of City property.

C. Community Assessment – Estimated Impact of Solution on Residents and Businesses During First Full Fiscal Year of Operation.

1. What groups will be affected by this solution?

Auctioneers will be affected by this solution because they will not be used for the sale.

2. What will be the impact(s) on these groups?

No auctions taking place.

3. What evidence was used to form this opinion view?

Logic. If sales occur without auctions, auctioneers will be affected.

4. What plans do you have, if any, to mitigate any negative impacts identified?

There are no plans to mitigate the negative impacts.

D. Additional Information.

There is no additional information.

SECTION III: AFFIDAVITS



Appendix A
Verification of Compliance with Public Hearing Mandate

City of Nitro
Office of the City Recorder
P.O. Box 308
Nitro, WV 25324

I, the undersigned City Recorder of Nitro, West Virginia, do hereby certify that on April 10, 2014, at 7:00 pm, a Public Hearing was held on the City's proposed written home rule plan in conformity with the requirements of West Virginia Code § 8-1-5a.

Attached are true, correct and complete copies of page one of the Nitro City Council Agenda, evidencing the Public Hearing and the signature of citizens who spoke either in favor or against the written plan and its submission to the Municipal Home Rule Board pursuant to Ordinance No. 14-3.

Witness the signature of the undersigned City Recorder of the City of Nitro, West Virginia, and the seal of the City, this 21st day of May, 2014.

Rita Cox
City Recorder

**Appendix A, Verification of Compliance with Public Hearing Mandate
Attachment 1, Public Hearing Mandate Verification**

NITRO CITY COUNCIL
MINUTES
TUESDAY, FEBRUARY 18, 2014

CALL TO ORDER: The meeting was called to order at 7:00 pm by Mayor Casebolt. In attendance were Recorder Rita Cox, Councilwoman at Large Brenda Tyler, Councilmen at Large Bill Javins and John Montgomery, Ward 1 Councilman Al Walls, Ward 2 Councilman Bill Racer, Ward 3 Councilwoman Laurie Elkins, Ward 4 Councilman Andy Shamblin, City Attorney Johnnie Brown and City Treasurer John Young.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilwoman Brenda Tyler and the Pledge of Allegiance was led by Rich Hively.

FUTURE DATES OF COUNCIL: Mayor Casebolt said the future dates of Council are March 4 and 18 and April 1 and 15.

APPROVAL OF COUNCIL MINUTES: RECORDER RITA COX MOVED THAT COUNCIL APPROVE THE MINUTES OF FEBRUARY 4, 2014 WITH A SECOND BY COUNCILMAN ANDY SHAMBLIN. COUNCIL VOTED FOR THE MOTION TO CARRY WITH COUNCILWOMEN BRENDA TYLER AND LAURIE ELKINS ABSTAINING.

SETTING A DATE/TIME FOR PUBLIC HEARING FOR HOME RULE APPLICATION: COUNCILMAN JOHN MONTGOMERY MOVED COUNCIL MEET AT 7:00 PM, APRIL 10 IN COUNCIL CHAMBERS FOR A PUBLIC HEARING ON THE APPLICATION FOR HOME RULE. THE MOTION WAS SECONDED BY COUNCILMAN AL WALLS AND COUNCIL VOTED FOR THE MOTION TO CARRY.

RESOLUTION ACCOUNT WITH CITY NATIONAL BANK FOR LOAN FOR NEW TRASH TRUCK: City Treasurer John Young said that he has not heard back from a representative from City National Bank about the loan. COUNCILMAN WALLS MOVED THE RESOLUTION BE TABLED AND THE MOTION WAS SECONDED BY COUNCILWOMAN ELKINS. VOTE WAS UNANIMOUS FOR THE MOTION.

STREETSCAPE PHASE 2/NOTICE TO PROCEED: Mayor Casebolt said he had recently received the Notice To Proceed from the WVDOH for Streetscape Phase 2 on 21st Street from First Avenue to Second Avenue and that he had asked Baker Engineering to submit a quote for the project.

HIGHEST AND BEST USE FORMER A-1 BUILDING/COMMITTEE APPOINTMENTS: COUNCILMAN JOHN MONTGOMERY MOVED A COMMITTEE CONSISTING OF THE FOLLOWING BE FORMED TO STUDY AND RECOMMEND TO COUNCIL THE HIGHEST AND BEST USE OF FORMER A-1 CARPET BUILDING: TREASURER JOHN YOUNG, COUNCILMAN AT LARGE BILL JAVINS, KEN PAINTER, WARD 3 COUNCILWOMAN LAURIE ELKINS, WARD 4 COUNCILMAN ANDY SHAMBLIN, POLICE CHIEF BRIAN OXLEY, CODE ENFORCEMENT OFFICER CAPTAIN RON KING, AND CHUCK BOGGS. THE MOTION WAS SECONDED BY COUNCILMAN AL WALLS AND COUNCIL VOTED FOR THE MOTION TO PASS.

**Appendix A, Verification of Compliance with Public Hearing Mandate
Attachment 2. Photocopy of sign-in sheet for Public Hearing.**

**PUBLIC HEARING
APRIL 10, 2014**

The purpose of this Public Hearing is to receive comments from the public regarding this City's written plan to participate in the Phase II of the Municipal Home Rule Pilot Program, and the ordinance that will be prepared and which will authorize the Mayor to submit the written plan to the Municipal Home Rule Board.

In favor of the proposed Plan:

- | | |
|-----------------------------|-----------|
| 1. <u>Hershel Foxenmyer</u> | 6. _____ |
| 2. _____ | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

Opposed to the proposed Plan:

- | | |
|----------|-----------|
| 1. _____ | 6. _____ |
| 2. _____ | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

**Publication Mandate Verification
Appendix B, Verification of Publication of Notice of Public Hearing
Attachment 1, Photocopy of invoice from newspaper.**

Charleston Newspapers

P.O. BOX 2993
Charleston, WV 25330
Billing 348-4818
Classified 348-4848
1-800-WVA-NEWS

LEGAL ADVERTISING INVOICE

INVOICE DATE	03/17/14	M
ACCOUNT NBR	090440000	
SALES REP ID	0075	
INVOICE NBR	894026001	

BILL TO:

CITY OF NITRO
NITRO CITY HALL/ACCTS.PAYABL
P O BOX 308
NITRO WV 25143 USA

Attn: Rita Cox

Please return this portion with your payment.
Make checks payable to: Charleston Newspapers

AMOUNT PAID: _____

INVOICE DATE	03/17/14
ACCOUNT NBR	090440000
SALES REP ID	0075
INVOICE NBR	894026001

Legal pricing is based upon 63 words per column inch.
Each successive insertion is discounted by 25% of the first insertion date.
The Daily Mail rate is \$.13 per word, the Charleston Gazette rate is \$.14 per word, and the Metro Putnam rate is \$.13 per word.

END DATE	AD TYPE	PUB	DESCRIPTION	AD NUMBER	AD SIZE TOTAL RUN	RATE	GROSS AMOUNT	NET AMOUNT
03/07	LEGF	GZ	3/10,3/17 HOME RULE 894026001	0556007	1X0225 2.25	8.82	19.85	19.85
03/07	LEGF	DM	3/10,3/17 HOME RULE 894026002		1X0225 2.25	8.19	18.43	18.43
03/14	LEGR	GZ	3/10,3/17 HOME RULE 894026003		1X0225 2.25	8.82	19.85	14.89
03/14	LEGR	DM	LEGAL DISCOUNT 25% 3/10,3/17 HOME RULE		1X0225		4.96	

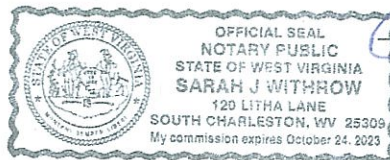
State of West Virginia

I, *Sara R. Hywater* of _____

do solemnly swear that the legal notice of:

was duly published in said newspaper(s) at the stated price for the respective newspaper(s) and during the dates listed below:

Subscribed and sworn to before me this *25th* day of *April, 2014*



Sarah J. Withrow
Notary Public of Kanawha County, West Virginia

**Appendix B, Verification of Publication of Notice of Public Hearing
Attachment 2. Photocopy of legal notice**

**LEGAL
ADVERTISEMENT
LEGAL NOTICE**

The City of Nitro, West Virginia, will hold a public hearing at 7:00 p.m. on April 10, 2014 in the City Council Chamber to receive comments from the public on the proposed City of Nitro Municipal Home Rule Pilot Program, Phase II written plan, pursuant to W. Va. Code § 8-1-5a.

Interested parties may appear at the Public Hearing and be heard with respect to the written plan. A copy of the proposed written plan may be inspected at the City Hall beginning March 10, 2014 between the hours of 8:00 a.m. and 4:00 p.m. daily, Monday through Friday.

(556007)

Appendix C
Certified Copy of Ordinance Authorizing Submission of Written Plan

ORDINANCE NO. 14-3

Introduced in Council:

May 6, 2014

Introduced by:

Councilman at Large John Montgomery

An ordinance authorizing the City of Nitro, West Virginia, to submit to the Municipal Home Rule Board an application and written plan consistent with the requirements of West Virginia Code § 8-1-5a (2013) to allow the City to participate in Phase II of the Municipal Home Rule Pilot Program.


BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, that on behalf of the City of Nitro, the Mayor and the Administration of the City are hereby authorized and requested to submit to the Municipal Home Rule Board, in accordance with the requirements of West Virginia Code § 8-1-5a (2013) and the 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 City to participate in Phase II of the Municipal Home Rule Program. The Mayor and the Administration are further authorized to sign the agreement relating to firearms required by West Virginia Code § 8-1-5a (2013)(k)(11) and (p), and do all things reasonably necessary to obtain approval by the Board of the City's application and written plan.

Passed on First Reading May 6, 2014

Passed on Second Reading May 20, 2014



Dave Casebolt, Mayor



Rita Cox, Recorder



Appendix C
Certified Copy of Ordinance Authorizing Submission of Written Plan

Attachment 1, Ordinance Certification Letter.

I, the undersigned City Recorder of Nitro, West Virginia, do certify that the foregoing ordinance is a true, correct and complete copy of Ordinance 14-3 authorizing submission of the City's written plan to the Municipal Home Rule Board, which was adopted by the City Council of the City of Nitro, West Virginia on May 20, 2014.

Witness the signature of the undersigned City Recorder of the City of Nitro, West Virginia, and the seal of the City, this 21st day of May, 2014.

A handwritten signature in blue ink that reads "Rita Cox". The signature is written over a horizontal line.

Rita Cox
City Recorder

Appendix D

Fiscal Impact Worksheets/Formulas

The Fiscal Impact Worksheets for each problem is inserted immediately following the discussion of the respective problem. Specifically, the page number where each respective Fiscal Impact Worksheet may be found is listed below.

1. Collection Of Unpaid And Delinquent Municipal Service Fees. Page 6
2. Authority To Enact Municipal Administrative Procedures Act Ordinance, Issue And Enforce Administrative Regulations, Hold Hearings, And Collect Delinquent Taxes And Fees. Page 13
3. Municipal Government Oversight Of Expenditure Of Public Funds. Page 18
4. Imposition Of Municipal Consumers Sales And Service Tax And Use Tax. Page 40
5. Authority To Reduce Speed Limits On State Roadways Within Municipal Boundaries. Page 48
6. Sale Of Municipal Property Outside Of The Auction Procedure. Page 52

**Appendix E
Feasibility Study**

The Feasibility Study, titled ATTACHMENT 2 to PROBLEM 4, relating to the issue for imposing the municipal sales and service tax and use tax is found immediately following the Fiscal Impact Worksheet for Issue 4. It may be found at page 33.



May 23, 2014

Patsy Trecost, 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: City of Nitro, West Virginia, Municipal Home Rule Pilot Program Phase II Plan

Dear Chairman Trecost:

We have served as special counsel to the City of Nitro, West Virginia, in connection with the above referenced Municipal Home Rule PILOT Program Phase II Plan (the "Plan"). In connection with rendering this opinion, we have reviewed W. Va. Code § 8-1-5a (2014), the Application Guidelines for Participation in Phase II of the Municipal Home Rule Pilot Program and the Application of the City to participate in Phase II of the Municipal Home Rule Pilot Program, including all attachments thereto.

Based upon our examination of said documents and our understanding of the Application, it is our opinion that the Proposed Plan complies with W. Va. Code § 8-1-5a (2014).

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

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By: *Brian Helmick*
Brian C. Helmick, Member
W. Va. State Bar No. 8815



Appendix G
Affidavit Certifying No Delinquent Fees

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: Nitro, West Virginia

Authorized Signature: 

Date: 5/21/2014

Print Name and Title: John Young, City Treasurer

State of West Virginia

County of Kanawha / Putnam, to-wit:

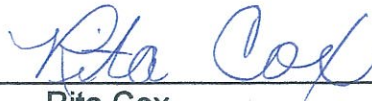
Taken, subscribed, and sworn to before me this 21st day of May, 2014

My Commission expires: March 3, 2016

AFFIX NOTARY SEAL HERE:



Certifying Official Signature:

A handwritten signature in blue ink that reads "Rita Cox". The signature is written in a cursive style with a horizontal line underneath it.

Rita Cox
Recorder, City of Nitro