

Municipal Home Rule Application
City of Hurricane



Submitted September 5, 2019

Home Rule Plan & Amendment Template

SECTION I: APPLICANT INFORMATION	
A. General Information	
Name of Municipality: City of Hurricane	
Certifying Official: Scott Edwards	Title: Mayor
Contact Person: Ben Newhouse	Title: City Manager
Address: 3255 Teays Valley Road	
City, State, Zip: Hurricane, WV 25526	
Telephone Number: 304-562-5896	Fax Number: 304-562-5858
E-Mail Address: bnewhouse@hurricanewv.com	
2010 Census Population: 6,506	
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 <input type="checkbox"/> Other	

SECTION II: NARRATIVE (proposed plan or plan amendment)
<ol style="list-style-type: none"> 1. Identify the specific state laws, policies, acts, resolutions, rules or regulations that prevent the municipality from carrying out specific duties in the most cost effective, efficient, and timely manner. 2. Describe the specific problem(s) created by above stated laws, policies, acts, resolutions, rules or regulations. 3. Define each proposed solution to the above described problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. 4. See State Tax Department website for instructions regarding municipal sales and use tax (Business, Sales and Use Tax): https://tax.wv.gov/Business/SalesandUseTax/MunicipalSalesAndUseTax/Pages/MunicipalSalesAndUseTax.aspx

SECTION III: ATTACHMENTS
<ol style="list-style-type: none"> 1. Completed Plan and Amendment Checklist. 2. Affidavit of legal advertisement providing notice of the public hearing. 3. Minutes of public hearing, including comments (if any). 4. Copy of adopted ordinance authorizing submission of plan or amendment to Municipal Home Rule Board. 5. Fiscal statement demonstrating municipality's ability to manage costs or liabilities associated with proposal (if proposal is revenue related). 6. Affidavit of authorized municipality representative that municipality owes no outstanding State fees. 7. Attorney opinion letter stating that application and plan or amendment complies with applicable State law. <p>NOTE: Submit eight originals and one electronic copy of initial plan or amendment to the Municipal Home Rule Board a minimum of 30 days before a Board meeting.</p>

Section II: Narrative

Issue 1: Municipal Sales and Use Tax (Category - Tax)

Specific Barrier:

West Virginia State Code § 8-13-5, § 8-13C-4(a), § 8-13C-4(b).

Specific Problems created by law:

WV Code § 8-13-5 gives power to municipalities to impose a Business and Occupation Tax (B&O) on every person doing business within the municipality. It also states that municipalities cannot charge a rate higher than the maximum rate imposed by the state. Since this legislation was passed in January 1959, the rates are outdated and no longer provide adequate revenue for continued growth in municipalities.

WV Code § 8-13C-4(a) permits municipalities to charge a 1% sales and use tax only if the municipality's pension fund is underfunded. The City of Hurricane does not have an underfunded pension fund.

WV Code § 8-13C-4(b) permits municipalities to charge a 1% sales and use tax only if they repeal their B&O Tax entirely. Imposing a 1% sales and use tax in the City of Hurricane will not generate enough revenue to cover the lost B&O tax revenue if the tax is repealed entirely. Therefore, it is not feasible for the City to completely repeal the B&O tax.

Proposed Solution:

The City of Hurricane seeks authority pursuant to West Virginia Code § 8-1-5a to enact an ordinance that imposes a 1% municipal sales and 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 the Streamlined Sales and Use Tax Administration Act as codified in West Virginia Code § 11-15B-1 *et seq.*

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 a municipal sales tax.

In addition, the City will reduce B&O tax rates in certain categories.

Discussion:

The City has developed plans for at least \$20,000,000 in capital improvements and equipment purchases. The City seeks to use the Sales and Use Tax revenues to accomplish the following improvements as well as other activities.

Projects:

1. **Fire Department Personnel (\$300,000/year)** – The City does not have any paid fire department staff. Currently, the Fire Department struggles to have enough volunteers to function in a timely manner. With the recent and upcoming construction of several new businesses, including a 4-story hotel, a new AEP facility, and other projects, reliable fire department coverage is a needed resource in the community. The City plans to employ a Fire Chief and three fire department employees.
2. **Fire Department Land and Construction of Fire Department (\$3,500,000)** – The City will look to acquire more centralized property to serve residents and businesses more quickly and efficiently. The City will be looking to purchase two acres of land and construct a new Fire Department.
3. **Community Center (\$2,500,000)** – The City currently has no community center to provide indoor recreational programs, education and safety instruction for area families. Many programs could be developed in the new center to provide more opportunities in the community.
4. **Senior Center (\$2,500,000)** – The City has a current senior center that has 5,000 square feet to feed 50 residents per day and transports more than 80 meals through Putnam County Aging. The current facility is more than 60 years old and does not meet the space requirements for future events and needs of the community.
5. **Hurricane Bridge Park (\$8,000,000)** – The newly acquired park will include hiking/biking trails, shelters, amphitheater, playing fields, restrooms, concession stands, press boxes, lighting, parking lots and many other attributes to provide area residents and their families an enjoyable recreational area.
6. **Construct new maintenance facility at Hurricane Bridge Park (\$350,000)** – With our new Hurricane Bridge Park a maintenance facility is needed to house mowers, weed eaters and other components to maintain the 45-acre park for residents to utilize.
7. **Police Department vehicles and equipment (\$200,000/year)** – With population increasing by 25% (U.S. Census Bureau), the City's need for law enforcement personnel, equipment, training and vehicles is increasing. Most federal and state funding does not assist with the purchase of equipment and vehicles to outfit our department. The City's current police force has 19 officers and two administrative personnel. The \$200,000 represents 2-3 vehicles per year, hiring of a new officer as needed, continuing education, vests, K-9 program, uniforms, license plate reader cameras, hand held radios, in-vehicle computers/software, tasers/guns and ammunition.
8. **Improve the City's facilities security system (\$120,000)** – Security systems at various facilities such as the wastewater plant, water plant, water tanks, city hall, street

department and our two parks must be upgraded to provide security coverage over many buildings, equipment and personnel.

9. **Street Paving (\$120,000/year)** – With over 25 miles of streets within City limits, street paving, curbs, striping, ADA fixtures and drainage are essential for maintaining our infrastructure. Increased economic and residential development will have future maintenance and upgrade costs to the City.
10. **Water tank (\$450,000)** – With continual growth, the City anticipates an additional 250,000-gallon tank will be needed to meet consumption demands. Currently, the City has two tanks to serve 7,000 residents.
11. **Utility/street department equipment (\$120,000/year)** – This estimate includes the provision to add/replace two vehicles per year based upon expected life and maintenance. Funding is also needed to replace excavators, backhoes, dump trucks and other equipment to maintain streets and utilities that are within our 3.74 square mile territory.
12. **City Department Software (\$300,000)** – The City has an antiquated software system to oversee all aspects of utilities, work orders, finance, personnel, business licenses, permits and much more. A windows based system could assist City workers with more timely information and will increase efficiency.
13. **Emergency Planning and Equipment (\$250,000)** – An updated emergency plan must be completed to assess the City's strengths and weaknesses. Also, emergency notification processes must be developed to ensure all residents are aware of protocols, shelters, etc. Traffic planning must be identified to route vehicles to their proper destination. Equipment such as message boards, lighting, generators, portable stoplights and signs and other equipment will need to be procured.
14. **Sidewalks (\$4,000,000)** – Constructing sidewalks with the City will enhance community value, provide recreational areas to walk and jog and connect neighborhoods to other neighborhoods, parks and retail.
15. **Energy Conservation (\$80,000/year)** – The City will continue to modify facilities to decrease energy consumption by utilizing better building practices such as lighting, windows, insulation and alternative fuel use. With the City at 3.74 square miles, many vehicles could utilize alternative fuels with less emission and greater efficiency.
16. **Water Reservoirs (\$1,200,000)** – The City utilizes a reservoir system as our primary water delivery system to the community. Anticipated growth will require the City to enhance our existing water plant, system and reservoirs. Additional reservoirs will be needed to meet the needs of residential and commercial consumption.
17. **Stormwater (\$150,000/year)** – Projects will be addressed to mitigate stormwater that infiltrates neighborhoods with the installation of culverts, drain inlets, curbs and other design standards.
18. **Wastewater Plant (\$120,000/year)** – Additional components and equipment are needed to upgrade the wastewater plant such as pumps, screens, pump truck, sweeper truck, SCADA upgrades, paving, clarifiers and other fixtures.
19. **City Park Maintenance Building (\$120,000)** – New facility needed at existing city park. Original building is barn construction and is approximately 50-60 years old. New metal

building would enhance security of maintenance equipment including mowers, weed eaters, etc.

Revenue Impact:

Under this plan, the City proposes to reduce B&O taxes by approximately \$158,000 annually. The B&O Tax rate on all Automobile Dealers classified as Retailers with gross sales over \$500,000 per quarter will be reduced by 20% from .50 to .40. Additionally, in an effort to attract more small businesses to locate within the City, we will reduce the B&O Tax rate on all Retailers with gross sales under \$500,000 per quarter by 50% from .25 to .125. This is illustrated in Table 1.

**Table 1
B&O Tax Reduction**

B&O Classification	Current Rate	New Rate	Reduction Based on 2018 Gross
Selling Tangible Property - Retailers under \$500,000/quarter	0.25	0.125	\$96,222.80
Selling Tangible Property - Retailers over \$500,000/quarter - Automobile Dealers only	0.50	0.40	\$62,084.92
Total B&O Reduction			\$158,307.72

The City estimates the 1% sales and use tax will generate approximately \$900,000 in revenue annually. This accounts for the State Tax Department's administrative fee. This is illustrated in Table 2.

**Table 2
Estimated Sales and Use Tax Revenue**

Gross Sales	\$94,984,432.34
1% Sales Tax	1.00%
Sales Tax Revenue	\$949,844.32
Less 5% State Admin Fee	(\$47,492.22)
1% Est Tax Revenue	\$902,352.10

The net change in total revenue for the City of Hurricane will be approximately \$744,000. This is illustrated in Table 3.

Table 3
Net Change in Revenue

Estimated Consumer Sales & Use Tax Revenue	\$902,352.10
Less Estimated Reduced B&O Tax Revenue	(\$158,307.72)
Net Change in Total Revenue	\$744,044.38

Issue 2: Sale of Municipal Property without Auction (Category - Administrative)

Specific Barrier:

West Virginia State Code § 8-12-18(b).

Specific Problems created by law:

WV Code § 8-12-18(b) states that a municipality must sell property at a public auction. The process of selling all property at public auction is a very involved process and creates risk.

Proposed Solution:

The City seeks permission to sell personal or real property of any value by negotiation and transfer without the requirement for public auction, as long as the sale is deemed to be for a public purpose by municipal resolution, adequate notice is provided to the public, and the sale is for adequate consideration, which may take into account fair market value.

Issue 3: Intergovernmental Agreements by Resolution (Category - Administrative)

Specific Barrier:

West Virginia State Code § 8-23-3 and § 8-11-3.

Specific Problems created by law:

WV Code § 8-23-3 and § 8-11-3 allow intergovernmental agreements between municipalities, but includes the requirements that the agreement must be approved by an ordinance and must be submitted to the Attorney General to determine if the agreement is legal. This process can

take as little as 30 days or as long as 60 days. At times, these agreements need to be completed expeditiously to allow the project to move forward in a timely manner.

Proposed Solution:

The City of Hurricane seeks to enter into intergovernmental agreements by resolution voted on by the governing body without submission to the Attorney General, as is now required.

Issue 4: On the Spot Nuisance Citations (Category - Administrative)

Specific Barrier:

West Virginia State Code § 8-12-16.

Specific Problems created by law:

WV Code § 8-12-16 requires Code Enforcement Officers to post public notice 10 days prior and to apply for and receiving approval from the municipal courts before a citation can be issued for any public nuisance including rundown properties. The process is inefficient and leads to an extended delay between identification of a public nuisance and compliance from the property owner.

Proposed Solution:

The City of Hurricane seeks authority to allow the Code Enforcement official to issue a citation directly to the property owner at the site and time of violation, without having to go through the process currently required.

Issue 5: Adequate Funding for Advertising the City (Category - Administrative)

Specific Barrier:

West Virginia State Code § 8-12-5 (52).

Specific Problems created by law:

WV Code § 8-12-5 (52) restricts the amount of money a municipality can spend towards advertising the municipality and the entertainment of visitors to twenty-five cents per capita per annum. This limitation on spending restricts the City from providing adequate funding to promote the City.

Proposed Solution:

The City of Hurricane seeks authority to spend an amount above the amount currently authorized under state code of twenty-five cents per capita per annum, in order to adequately advertise the municipality, to attract more people and events to the City of Hurricane, to promote the City's image, and create awareness for City events. Increased spending on advertising the municipality will increase the quality of life of residents, increase revenue to businesses within the City, and increase revenue to the City itself through business and occupation taxes collected.

HOME RULE APPLICATION, PLAN AND AMENDMENT CHECKLIST

- Class II legal advertisement of Public Hearing
 Dates 8/1/19 + 8/8/19
- Notice of Public Hearing to Municipal Home Rule Board (MHRB) and Cabinet Secretary of every State department *mailed 8/1/19*
- Plan available for public inspection 30 days prior to Public Hearing
- Hearing
 Date 9/3/19
- Ordinance authorizing plan or amendment
 1st reading date 8/5/19
 2nd reading date 9/3/19
 Date of adoption 9/3/19
- Required narrative presentation of each separate proposal (see Sample Form Application)

ATTACHMENTS

- Affidavit of legal notice of Public Hearing
- Minutes of Public Hearing, including comments (if any)
- Certified copy of ordinance authorizing plan or amendment
- Fiscal statement demonstrating municipality's ability to manage costs or liabilities associated with proposals
- Affidavit that municipality owes no outstanding State fees
- Attorney opinion letter that application and plan or amendment complies with applicable State law
- Submit eight (8) originals and one (1) electronic copy of application plan or amendment to the MHRB *mailed 9/5/2019*

ESTABLISHED 1900

COOKIE AMBLER
PUBLISHER

PHONE 304-562-9881

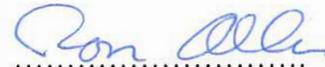
THE HURRICANE BREEZE

THE WEEKLY NEWSPAPER FOR ALL OF PUTNAM COUNTY
P.O. BOX 310
HURRICANE, WEST VIRGINIA 25526

CERTIFICATE OF PUBLICATION

STATE OF WEST VIRGINIA,
COUNTY OF PUTNAM, To wit:

This day personally appeared before me, a Notary Public of said County of Putnam, Ron Allen..... of The Hurricane Breeze, and after being duly sworn deposes and says that the attached legal publication was duly published in The Hurricane Breeze for TWO (2) consecutive issues, in its issues dated August 1 & 8, 2019.



The Hurricane Breeze

Subscribed and sworn to before me this .. 9th.... day
ofAugust....., 2019..



LEGAL ADVERTISMENT

**CITY OF HURRICANE
NOTICE OF PUBLIC HEARING**

The City of Hurricane will be conducting a Public Hearing for the City's Home Rule Application on September 3, 2019, at 5:45 p.m.

The hearing will take place at City Hall located at 3255 Teays Valley Road, Hurricane, WV 25526.

For more information, please contact Ben Newhouse at (304) 562-5896 or by email at bnewhouse@hurricanewv.com.

8-1-21

LEGAL ADVERTISEMENT

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8-1-2t

Attachment 3

**Hurricane City Council
Special Meeting Minutes
Home Rule Public Hearing**

September 3, 2019
5:45 PM

3255 Teays Valley Road
Hurricane, WV 25526

Mayor: Scott Edwards
Recorder: Linda Gibson
Council: Reggie Billups - absent
Brian Ellis - absent
Marshall Ginn
Steve Goff - absent
Gerry Spears
Treasurer: Dennis Carte, CPA - absent
City Manager: Ben Newhouse

The meeting was called to order by special guest, Connor Gray, at the direction of Mayor Edwards.

No one from the Public attended the meeting. Mayor Edwards and Councilman Ginn discussed that the main project using the 1% Municipal Sales Tax revenue would be the Fire Department.

Motion was made by Gerry Spears and seconded by Marshall Ginn to adjourn. **Motion** carried.

**City of Hurricane Special Council Meeting
Home Rule Public Hearing
Tuesday, September 3, 2019
5:45 p.m.**

Please sign in if you wish to address council.

In Favor of the Plan

Name

Phone #



3255 Teays Valley Road • Hurricane, West Virginia 25526
Telephone 304-562-5896 • Fax 304-562-5858
www.hurricanewv.com • info@hurricanewv.com

Mayor Scott Edwards
Recorder Linda Gibson
Council Reggie Billups
Brian Ellis
Marshall Ginn
Steve Goff
Gerry Spears

Attachment 4

Certified Copy of Ordinance Authorizing Submission of Written Plan

I, the undersigned City Recorder of Hurricane, West Virginia, do certify that the foregoing ordinance is a true, correct and complete copy of Ordinance 730 authorizing submission of the City's written plan to the Municipal Home Rule Board, which was adopted by City Council of the City of Hurricane, West Virginia on September 3, 2019.

Witness the signature of the undersigned City Recorder of the City of Hurricane, West Virginia, and the seal of the City, this 3rd day of September, 2019.

Linda Gibson
City Recorder



Ordinance 730

**AN ORDINANCE AUTHORIZING THE CITY OF HURRICANE TO FILE
AN APPLICATION AND PLAN PURSUANT TO THE WEST VIRGINIA
MUNICIPAL HOME RULE PROGRAM AS ESTABLISHED BY
WEST VIRGINIA CODE 8-1-5a; AUTHORIZING THE MAYOR AND CITY
MANAGER TO SIGN THE APPLICATION AND ALL DOCUMENTS AND
SUBMISSIONS TO BE FILED PURSUANT THERETO; AND
AUTHORIZING THE CITY RECORDER TO CERTIFY THIS ORDINANCE
FOR SUBMISSION WITH THE APPLICATION**

WHEREAS, the West Virginia Legislature duly adopted Senate Bill No. 4 establishing the Municipal Home Rule Program as a permanent program created pursuant to the provisions of West Virginia Code 8-1-5a; and,

WHEREAS, the City of Hurricane is an eligible municipality to participate in such program; and,

WHEREAS, eligible municipalities may submit a written plan and application pursuant to the provisions of said program; and

WHEREAS, the City of Hurricane has caused to be prepared an application and plan, together with attachments and affidavits; and,

WHEREAS, the City of Hurricane has caused to be published a notice as required by law and has conducted a public hearing pursuant to such notice.

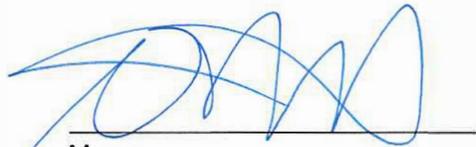
NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Hurricane, Putnam County, West Virginia, as follows:

1. That the City of Hurricane submit an application to participate in the Municipal Home Rule Program established by the West Virginia Legislature as set forth in West

Virginia Code 8-1-5a, together with all affidavits and attachments attached thereto, all in the form attached to this Ordinance and incorporated herein.

2. That the Mayor and City Manager be and they are hereby authorized to execute on behalf of the City the application and all associated documents submitted therewith as required by West Virginia Code 8-1-5a.
3. That the Recorder be and she is hereby authorized to certify this Ordinance and the manner of its adoption for submission with the application.

ADOPTED BY THE COUNCIL OF THE CITY OF HURRICANE ON SECOND AND FINAL
READING THIS THIRD DAY OF SEPTEMBER, 2019.



Mayor



Recorder



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Telephone 304-562-5896 • Fax 304-562-5858
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Mayor Scott Edwards
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Attachment 5

Fiscal Statement

The costs and liabilities involved in the City of Hurricane's Home Rule Plan include the estimated decrease in business and occupation tax revenue of \$158,307.72, the administration fee from the West Virginia Tax Department for administering, collecting, and enforcing the municipal sales and use tax revenue on the City's behalf of an estimated \$47,492.22, and the annual assessment owed to the Municipal Home Rule Board by all Home Rule cities of \$2,000.00.

The estimated revenue from implementation of the municipal sales and use tax is \$949,844.32.

The City will have a net revenue gain of \$742,044.38. As such, the City can cover all anticipated costs and liabilities associated with the Home Rule Program.

Thank you,

Ben Newhouse
City Manager



Hurricane

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Attachment 6

The City of Hurricane does not have any outstanding fees owed to the State of West Virginia.

Thank you,



Ben Newhouse
City Manager



RONALD J. FLORA

ATTORNEY AT LAW

1115 SMITH STREET
MILTON, WEST VIRGINIA 25541
TEL: (304) 743-5354
FAX: (304) 743-4120
LAWRO77@AOL.COM

September 4, 2019

Re: City of Hurricane, West Virginia
Municipal Home Rule Program

Dear Members of the Board,

I have served as Counsel to the City of Hurricane, West Virginia, in connection with the above referenced Municipal Home Rule Program Application. In connection with rendering this opinion, we have reviewed W.Va. Code §8-1-5a (2019), the Municipal Home Rule Program Application and the attachments and narrative thereto.

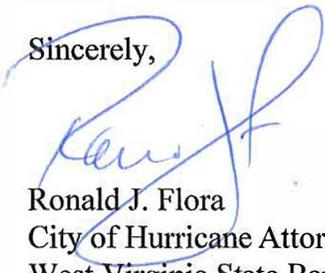
In addition, I have reviewed the following:

- A. The Ordinance authorizing the filing of the Application. (2 Readings)
- B. The proposal of the City to reduce the Business and Occupation Tax Rate.
- C. The Affidavits of Publication regarding the Public Hearing held on September 3rd, 2019 which were published at least thirty (30) days prior to the Public Hearing as a Class II Legal Advertisement.

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

The Municipal Home Rule Board may rely upon this opinion. If the Board has any questions or require anything further, please do not hesitate to contact my office.

Sincerely,



Ronald J. Flora
City of Hurricane Attorney
West Virginia State Bar No. 1227