



CITY OF FAIRMONT
MUNICIPAL HOME RULE PILOT PROGRAM
PHASE II APPLICATION



City of Fairmont
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Submitted May 28, 2014

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CITY OF FAIRMONT

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P.O. Box 1428
200 Jackson Street
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www.fairmontwv.gov

May 28, 2014

Debbie A. Browning
West Virginia Development Office
West Virginia Municipal Home Rule Pilot Program
State Capitol Complex Bldg. 6, Room 553
Charleston, WV 25305-0311

Re: City of Fairmont's Municipal Home Rule Application and Written Plan

Dear Members of the Municipal Home Rule Board:

On behalf of the Mayor and City Council for the City of Fairmont I am pleased to submit to the Municipal Home Rule Board for consideration the City of Fairmont's Application to the Home Rule Phase II Pilot Program along with the accompanying Written Plan.

Under this cover, please find eight (8) original copies of the application along with supporting documents. An electronic copy of the plan has also been submitted to Debbie Browning at the West Virginia Development Office.

Chartered in 1899, Fairmont is a Class II municipality and serves as the County Seat of Marion County. Located in the heart of the I-79 Technology Corridor, Fairmont encompasses approximately 9 square miles with a population of 18,704 people, 8,133 households and 4,424 families residing in the City according to the 2010 Census.

The City of Fairmont operates under the Council-Manager form of government with members of Council elected from nine districts on a rotating basis every four years. The Council elects a Mayor from its membership every two years. Daily operations are overseen by the City Manager, who along with Department Heads in Building Inspection, Finance, Fire, Planning, Police, Public Works and Utilities manage approximately 185 employees in providing a full range of services to the businesses and residents of Fairmont.

With an economic base rooted in manufacturing and mineral extraction, Fairmont has embraced economic diversification through the technology and service sectors and seeks further economic growth through the development of its riverfront and the revitalization of its City Center and former industrial areas.

The City of Fairmont looks forward to participating in Phase II of the municipal Home Rule Pilot Program. Should you have any questions regarding our application or written plan, please do not hesitate to contact me.

Very Truly Yours,


Jay Rogers
City Manager

The City of Fairmont Home Rule Plan Municipal Home Rule Pilot Program Phase II

APPLICATION CHECKLIST

SECTION I: APPLICANT INFORMATION	
Page No.	
3	General Information
3	Municipal Classification
3-4	Specific Issue(s) to be Addressed
3	Issue(s) Category: Tax/Organization/Administrative/Personnel/Other

SECTION II: NARRATIVE	
Page No.	
3-4; 7; 21; 43; 54.	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.
7-8; 21-23; 43-45; 54-55.	Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.
8-20; 23-42; 45-53; 55-60.	Proposed solution(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include: 1) Proposed solution(s) in one of the five areas (tax/administrative/organization/ personnel/other) 2) If revenue related, estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.

SECTION III: AFFIDAVITS	
Page No.	
61	Hearing Mandate Verification
80	Publication Mandate Verification
81	Ordinance Authorizing Submission of Plan
18-20; 40-42; 51-51; 58-60.	Fiscal Impact Worksheets/Formulas (if revenue related)
85	Attorney Opinion (application complies with statutory requirements)
87	State of West Virginia Fees Statement (none outstanding)

THE CITY OF FAIRMONT MUNICIPAL HOME RULE PLAN

SECTION I: APPLICANT INFORMATION

A. General Information

Name of Municipality: City of Fairmont
Certifying Official: John I. Rogers, III
Title: City Manager
Contact Person: John I. Rogers, III
Title: City Manager
Mailing Address: 200 Jackson Street, Room 305,
P.O. Box 1428
Fairmont, WV 26554-1428
Telephone Number of Contact Person: 304-366-6211 ext. 308
Fax Number of Contact Person: 304-366-0228
E-mail Address of Contact Person: jrogers@fairmontwv.gov

B. Municipal Classification

_____ Class I ☒ Class II _____ Class III _____ Class IV

C. Category of Issues to be addressed:

☒ Tax _____ Organization ☒ Administration _____ Personnel

1. **Expanded Business and Occupation Tax Credits** (Tax) - The City of Fairmont desires via its proposed Home Rule Plan to expand its business and occupation tax credits to provide for credits which are unrelated to new and/or expanding businesses and which are not otherwise constrained by the provisions of West Virginia Code §8-13-5(f) and §11-13C-1 et seq. The City of Fairmont via its proposed Home Rule Plan desires to offer credits against B & O Taxes for:

1. Re-occupancy of vacant or dilapidated structures
2. Longevity of business operations;
3. Rehabilitation and preservation of contributing historic structures in the City's Downtown Historic District.

In addition, the City desires to expand the definition of "qualified investment" for purposes of its existing business expansion tax credit, to include "payroll costs" associated with new and additional jobs, in addition to "property purchased for expansion."

2. **Imposition of a Sales & Use Tax** (Tax) - The City of Fairmont, pursuant to the provisions of West Virginia Code §8-1-5a (k)(6), desires via its proposed Home Rule Plan to enact a consumers

sales and use tax in an effort to, among others, finance unfunded liabilities and current pay as you go costs of the Fairmont Firemen's Pension and Relief Fund and the Fairmont Policemen's Pension and Relief Fund and to finance the City's program to demolish blighted and dilapidated properties.

The imposition of the proposed 1% sales and use tax is anticipated to produce income net of business and occupation tax reductions of approximately \$909,000.00 per year.

3. Relief from the Provisions of West Virginia Code §8A-7-10(c) and (d) (Administration) - The City wants to eliminate the effects of the aforementioned provisions of the West Virginia Code and to provide that such uses are defined as non-conforming uses under the City of Fairmont current Planning and Zoning Code and therefore must follow a prescribed process in order to expand or relocate. Classifying these as non-conforming uses, if they are in fact within an area designated contrary to the use proposed, would allow equal protection to occur to non-industrial, non-manufacturing, and non-agricultural uses. It will also allow local regulations, which are designed to protect adjacent neighbors and the public health, safety and welfare, to be enforced.

4. Disposition of City Real Property (Administration) - The City of Fairmont seeks relief from the notice and public auction requirements of West Virginia Code §8-12-18(b) for City owned real property with a value of up to \$15,000.00 relative to non-conforming and substandard lots, fragments of lots, and parts of lots, the market for which is virtually non-existent. The number of these parcels have increased and will continue to increase due to the City's ongoing efforts to remove blighted, vacant and dilapidated structures. Notwithstanding that the value of the lot may exceed \$1,000.00, the cost associated with the notice and public auction requirements often exceed the value of the lot. The provisions of West Virginia Code §8-11-3(6) and §2.12(6) of the City Charter, which require that any sale or conveyance of City owned real estate must be authorized by Council by ordinance, will continue to provide adequate public notice of any such sale.

THE CITY OF FAIRMONT MUNICIPAL HOME RULE PLAN

SECTION II. WRITTEN PLAN NARRATIVE

Introduction

Like many West Virginia municipalities, the City of Fairmont finds itself trapped by the workings of Dillon's Rule in its day to day operations. With no freedom to develop creative solutions for job creation, vacant & blighted properties and long term liabilities, the City of Fairmont seeks to break away from the bindings of the Municipal Code of West Virginia and become a Home Rule City under Phase II of the Municipal Home Rule Pilot Program.

The City of Fairmont has experienced a decline caused by chronic long-term economic dislocation and the loss of high wage manufacturing and mineral extraction jobs over several decades in the last century. The decline is particularly apparent in the oldest areas of Fairmont, including the Downtown Historic District, former industrial areas of the city and many of the original residential neighborhoods of Fairmont. This economic decline has resulted in population loss, slow job growth and reduced property maintenance, resulting in an increased number of vacant and dilapidated properties.

Several steps have been taken by the City to reverse this trend through a series of planning initiatives such as the Downtown Revitalization Plan, the Riverfront Master Plan and the Urban Renewal Plan. A 10-year development program has been established that envisions a more vibrant community where commercial, office, residential, cultural, recreation and institutional uses coexist.

Strong partnerships have been formed to package real estate and infrastructure projects, solicit private investment, and when necessary, structure the financing plans necessary to accomplish the proposed improvements.

Sound planning and analysis has led Fairmont to the brink of a true renaissance. The City finds that many of the existing provisions of WV Code § 8-1-1 et seq. prevent and discourage the needed innovative approaches to accomplish the goals of Fairmont to reduce and eliminate vacant and dilapidated properties, encourage job growth and stabilize long term liabilities.

The City of Fairmont is seeking acceptance into Phase II of the Municipal Home Rule Pilot Program to accomplish our goals by gaining the ability to transfer property without public auction and to provide for additional B&O Tax credits. These additional credits will aid in the reduction of vacant and dilapidated structures and will provide for the improvement and preservation of the Downtown Historic District, as well as incentivize businesses to locate, stay and grow in Fairmont. Additionally, the City proposes to utilize Home Rule to regulate land uses locally to redevelop former industrial areas of the city and through the implementation of a municipal sales & use tax, the City of Fairmont finds a means to stabilize the long term liabilities of the fire and police pension funds.

As the City's Written Plan demonstrates, great thought has been taken to fully utilize the powers of municipal home rule to address the impediments to Fairmont's renaissance.

THE CITY OF FAIRMONT MUNICIPAL HOME RULE PLAN

SECTION II WRITTEN NARRATIVE

PROPOSAL 1. EXPANDED BUSINESS AND OCCUPATION TAX CREDITS (Tax)

Specific state laws, policies, rules or regulations

West Virginia Code §8-13-5(f) and West Virginia Code §11-13C-1, et seq.

Problem: The provisions of West Virginia Code §8-13-5 provide municipalities with the power and authority to impose, by ordinance, a similar business and occupation tax on business activities or occupations for which the State of West Virginia imposed its annual business and occupation or privilege tax under West Virginia Code §11-13-1 et seq., prior to July 1, 1987.

As part of said taxing power, a municipality is provided with the authority to offer tax credits; however, such authority is constrained by the provisions of West Virginia Code §8-13-5(f), which provide that “[w]here the governing body of a municipality imposes a tax authorized by this section, such governing body shall have the authority to offer tax credits from such tax as incentives for new and expanding businesses located within the corporate limits of the municipality.”

Given that municipalities may only exercise the power and authority conferred by statute or reasonably implied or fairly incidental thereto, (*WVC 8-1-6; McAllister v. Nelson 186 W.Va. 131; 411 S.E.2d 456, 1991; and Hock v City of Morgantown 162 W.Va. 853; 253 S.E.2d 386, 1979*), and in light of the limiting language contained in West Virginia Code §8-13-5(f), municipalities that impose a business and occupation tax may only offer credits from tax for business investment and job expansion similar to and consistent with those found in West Virginia Code §11-13C-1, et seq. *Business Investment and Job Expansion Tax Credits*.

Pursuant to the aforementioned authority, the City of Fairmont enacted Ordinance No. 742 on April 14, 1987 in order to impose a business and occupation tax within the corporate limits, which ordinance is codified as Article 761 *Business and Occupation Tax* of the Fairmont City Code. As part of the City of Fairmont’s tax code, tax credits for new and expanding business predicated upon job creation and qualified investment consistent with §8-13-5(f) and §11-13C-1, et seq., were offered. Initially, the credits were only offered to industrial and manufacturing taxpayers, however, as the City’s industrial and manufacturing base eroded in the latter part of the 20th century and in an effort to attract new and keep existing businesses, the City of Fairmont, by ordinance, made the credits available to virtually all classes of taxpayers, including the service and retail sectors.

Notwithstanding the City’s efforts to expand the available credit universally to all classes of taxpayers, as mandated by §8-13-5(f) and §11-13C-1, et seq., the credit was/is still measured by the dollar amount of the qualified investment and the number of jobs created within the corporate limits.

The City of Fairmont has experienced a decline similar to that suffered by many West Virginia communities caused by chronic long-term economic dislocation and the loss of high wage manufacturing jobs over several decades in the last century, which decline is particularly apparent in the oldest areas of the City of Fairmont, including, but not limited to the City's downtown historic center, its former industrial areas, and many of its original residential neighborhoods;. Particularly in the areas aforementioned, the economic decline has resulted in a loss of population, reduced property maintenance, and in some instances vacant, abandoned and/or dilapidated structures.

The City of Fairmont, in conjunction with other governmental entities and the private sector, has made considerable efforts to diversify its economy into technology and service based industries in order to avoid the boom/bust economy associated with its former economic base, and the City of Fairmont, in conjunction with other governmental entities and the private sector, has made a considerable effort to revitalize the areas aforementioned.

Despite the numerous improvement projects, the goals of economic stability and revitalization and renewal of the City of Fairmont have only been partially realized, and the lack of jobs, reduced business opportunities, and vacant, abandoned and dilapidated structures continue to plague the City of Fairmont and result in the expenditure of valuable public resources and reduced property values.

The provisions of West Virginia Code §8-13-5(f) and §11-13C-1 et seq., stand as an impediment to the City's goals of revitalization and economic stability.

Solution: In an effort to further the goal of revitalization and stabilization, the City of Fairmont desires to provide for different and additional tax credits which are unrelated to new and/or expanding business, and which are not otherwise constrained by the limitations imposed by the provisions of by §8-13-5(f) and §11-13C-1 et seq..

In an effort to further the goals of revitalization and economic stability, the City desires, via its proposed Home Rule Plan, to offer tax credits for:

1. Re-occupancy of vacant or dilapidated structures -Vacant and dilapidated structures are inimical to the public health, safety and morals of the City, result in decreased property values and require increased expenditures of public funds. In order to encourage the re-occupancy of vacant structures and dilapidated structures within the City, and thereby provide for the elimination of said problem, the City of Fairmont proposes to provide a tax credit against the business and occupation tax for the re-occupancy of vacant structures and dilapidated structures within the City limits. The allowable credit will be measured as a percentage of the annual tax liability generated from the re-occupied structure.



Photo 1: Fairmont Tire Center – Vacant building in downtown Fairmont

2. Longevity of business operations- In order to encourage longevity of business operations, the City of Fairmont proposes to provide taxpayers a credit against the business and occupation tax for businesses which meet certain anniversary milestones for continuous operation in the corporate limits of the City. The allowable credit will be measured as a percentage of the number of years the business remains in operation in the City of Fairmont up to 100 years and 100% of the tax liability for the 100th year.



Photo 2: Friendly Furniture – 35 years in operation

3. Rehabilitation and preservation of contributing historic structures in the City's Downtown Historic District- In order to encourage rehabilitation and preservation of contributing historic structures in the City's Downtown Historic District, the City of Fairmont proposes to provide a tax credit to taxpayers against business and occupation tax liability relative to improvements made by a taxpayer for the rehabilitation and preservation of a contributing structure within the City's Downtown Historic District. The allowable credit will be measured by the costs of improvements.



Photo 3: Masonic Temple Building – National Historic Register 1995

4. Payroll taxes as “qualified investment” -In addition, the City also desires, via its proposed Home Rule Plan, to expand the definition of “qualified investment” for purposes of its existing business expansion tax credit to include “payroll costs” associated with the creation of new and additional jobs, in addition to “property purchased for expansion.” The expanded definition of “qualified investment” will be inconsistent with the corresponding definitions found in West Virginia Code §11-13C-1, et seq.

The following illustrations are supportive of the City's proposal to expand its business and occupation tax credits and demonstrate the potential fiscal impact on the City's revenues.

Illustration A. Analysis of B & O Tax Credit for Re-occupancy Rental Property

Illustration B. Fairmont Downtown Historic District Map

Illustration C. Fairmont Downtown Historic District List of Contributing Structures Occupied by Business

Illustration D. Fairmont Downtown Historic District List of Contributing Structures Unoccupied

Illustration E. Example of Historic District Tax Credit applied to a Qualifying Structure

Illustration F. Example of Tax Credit Due to Increased Payroll Costs as Sole Qualifying Investment.

The proposed enlarged and expanded tax credits will bear a real and substantial relationship to the legitimate government objectives of revitalization and renewal of the City of Fairmont; the elimination of blighted and dilapidated structures; job creation; diversification of the City's economy in an effort to avoid the boom/bust economy associated with its former manufacturing and industrial base; and the preservation of historic structures, among others

The proposed tax credits are uniform and equal within the various classifications to be created and the classifications bear some real and substantial relationship to the aforementioned government objectives sought to be accomplished. *United Fuel Gas Company v. Battle*, 167 SE 2d 890 (W.Va. 1969); *Town of Burnsville v. Cline*, 188 W.Va. 510, 425 S.E.2d 186 (1992).

City of Fairmont

Illustration A

Example of B&O Tax Credit for Reoccupancy of Rental Property
Home Rule Application

Commercial Class IV

Assessed Value = \$	20,000.00	State	\$	2.94	1.00%
2013 County Rate =	0.024532	County	\$	64.68	22.00%
2013 Municipal Layer =	0.0050	School	\$	211.68	72.00%
2013 County Tax Due = \$	294.00	Excess Levy	\$	14.70	5.00%
2013 City Tax Due = \$	60.00		\$	294.00	100.00%
		Municipal	\$	60.00	
		Total Property Tax Due:	\$	354.00	

Improvements:

	\$	60,000.00
2013 Add'l County Tax Due = \$		883.00
2013 Add'l City Tax Due = \$		180.00
Total Add'l Property Tax Due:	\$	1,063.00

B&O Tax Reported: at \$1.00
 FY14 \$ 3,600.00 \$ 36.00
 (Rents of \$300 per month)

Incremental Increase in ad valorem:

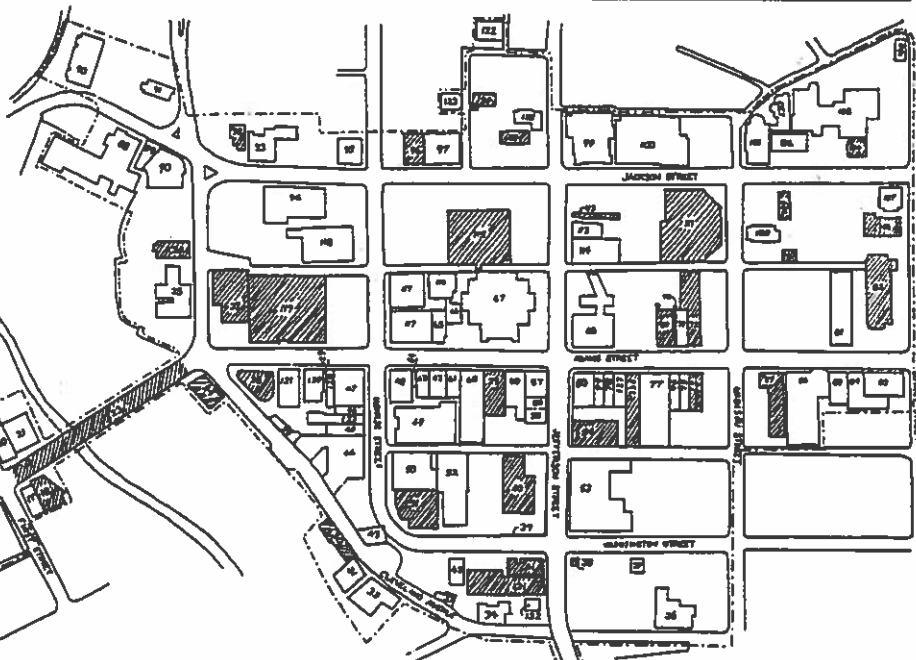
	\$	60,000.00
2013 Add'l County Tax Due = \$		883.00
2013 Add'l City Tax Due = \$		180.00
Total Add'l Property Tax Due:	\$	1,063.00

FY15 \$ 8,400.00 \$ 84.00
 Increased Rents:
 (Rents of \$700 per month)

B&O Tax Credits on \$60,000 improvements on Raze and Repair:
 at \$1.00 per \$100

Year One:	\$	84.00	100%
Year Two:	\$	42.00	50%
Year Three:	\$	42.00	50%
Year Four:	\$	42.00	50%
Year Five:			
Year Six:			
Year Seven:			
Year Eight:			
Year Nine:			
Year Ten:			
	\$	210.00	

Fairmont Downtown Historic District



Contributing (historic) Structures:

- ### Structures:
1. 225 Polverini Avenue
 2. 221 Polverini Avenue
 3. 219 Polverini Avenue
 4. 211 Polverini Avenue
 5. 205 Polverini Avenue
 6. 203 Polverini Avenue
 10. 177 Polverini Avenue
 11. 107 Polverini Avenue
 12. McCay Building, 100 Polverini Avenue
 13. Year Building, 103-105 Polverini Avenue
 14. Old Post Office, 200 Polverini Avenue
 16. YMC/ YM/ YMCA, 100 Polverini Avenue
 17. 84 Polverini Avenue
 18. 505-511 First Street
 20. WCTU Building, 99 Polverini Avenue
 21. Crawford Building, 67-69 Polverini Avenue
 22. Thousand People House, 504 First Street

- 25. Professional Building, 307-311 Cleveland Ave.
- 28. Hays Building, 325 Cleveland Ave.
- 31. Jacobs-Humphreys Warehouse, 233-235 Cleveland Avenue
- 32. Jacobs-Humphreys Office, 231 Cleveland Avenue
- 33. Union Mission Territory, Cleveland Avenue
- 34. Union Mission Ministry, Cleveland Avenue
- 35. Menageries Bridge, Jefferson Street
- 36. Ellis Lodge, 104 Cleveland Avenue
- 37. 314 Washington Street
- 39. WPA Rectifying Wall, Jefferson and Washington Streets
- 42. Union Mission Chapel, Washington Street
- 43. Cooney's Ford Street, 201 Main Street
- 44. City Park and Police Building, 211-215 Main Street
- 45. Hays Building, 217 Main Street
- 46. Burns Building, 211 Main Street

- 47. Darvey Building, 223 Monroe Street
- 48. Plumber Building, 223 Monroe Street
- 49. Mahabadi Protestant Temple, 216-218 Adams Street
- 50. Elit Thakumar Building, 216 Adams Street
- 51. Washington Street
- 52. Riverside Library/Polmerman Hall, 200-212 Jefferson Street
- 53. 219-221 Jefferson Street
- 54. Haywood Building, 225-229 Jefferson Street
- 55. Cooverford Building, 234 Adams Street
- 56. Fleming Building, 226-228 Adams Street
- 57. McCarty Building, 218 Adams Street
- 58. T.R. Hall Building, 216 Adams Street
- 59. Adams Office Building, 210-212 Adams Street
- 60. Adams Office Building, 210-212 Adams Street
- 61. 308 Adams Street
- 62. 326 Adams Street
- 63. Searley Bank Building, 209 Adams Street

66. Sherb's Bookstore/Martin County Museum,
1113 Adams St.
67. Martin County Courthouse, 217-221 Adams
Street at Jefferson Street
68. Womans Building, 201 Adams Street
69. Shub's Chis, 345 1/2 Adams Street
71. Hub-Rub Building/Alb's, 325 Adams
Street
75. demolished
76. demolished
77. Murphy Building, 114-120 Adams Street
79. Childs Building, 308 Adams Street
79. 308 Adams Street
83. Christie's Drugs/Hawley's, 300-302 Adams
Street
81. Ellis Chis, 421 Adams Street
83. 436-432 Adams Street
84. 420 Adams Street
83. 418 Adams Street

86. Palmate Theatre, 410-418 Adams Street
88. Armory, 9 Locust Avenue
89. 337 Cleveland Avenue
90. Elms Tenant Apartments, 11-13 Locust Avenue
91. Trinity Church, 407 Cleveland Avenue
92. 137 Jackson Street
94. Jackson-Drew Building, 116 Jackson Street
Elmer Building, 120 Jackson Street
95. 401 Monroe Street
97. 213 Jackson Street
98. Presbyterian Church, 301 Jackson Street
(CG demolished)
101. St. Peter's Catholic Church, 401 Jackson St.
102. St. Peter's Rectory, 407 Jackson Street
99. Catholic Grade School, 413 Jackson Street
105. Madison and Quincy Streets
107. Federal Army Thrift Shop, 425 Quincy Street
108. Free National Bank, 323 Madison St.

113. 154 Jefferson Street
114. Manning People Building, 216-722 Jefferson Street
116. Marvin County Jail, one of 215 Adams St.
118. Joseph-Henrichs Block, 203-207 Adams Street and Joseph Building, 312-316 Monroe Street
119. Marvin County Public Library, 521 Monroe St.
120. Peoples Building, 120 Adams Street
121. Weaver Building, 110 Adams Street
122. Court Plain Building, 219 Court Street
123. residence, 411 Jefferson Street
124. residence, 409 Jefferson Street
127. 310 Adams Street
128. Martins Place Annex, 124 Adams Street
129. Infill, 122 Adams Street
130. 616 Madison Street
132. 170 Jefferson Street
133. Times Building, 219 Monroe Street

FAIRMONT DOWNTOWN HISTORIC DISTRICT
CONTRIBUTING STRUCTURES OCCUPIED BY BUSINESSES
FEBRUARY 3, 2014

Illustration C

CONTRIBUTING STRUCTURE			BUSINESS
NUMBER	NAME	ADDRESS	NAME
2		221 Fairmont Ave.	Main Street Shops
		221 Fairmont Ave.	D&R Rentals
3		219 Fairmont Ave	Steve Perrotti Rentals
9		201 Fairmont Ave	ALL PRO LLC
10		117 Fairmont Ave	H&K REAL ESTATE
21	Crawford Building	87-89 Fairmont Ave	Aspire Uniqueness
			Noteworthy Sweets
22	Traction Freight House	504 First St/?101 Fairmont Ave	Mi Pueblo
25	Professional Building	307-311 Cleveland Ave	Petrucci Brothers-rents
			Pitrolo & Assoc CPA
			New U Hair Supply
			SS Photography
			West Side Trading Post
46	Sample Building	221 Monroe St	Sansalone & Sansalone
47	Deveny Building	223 Monroe St (132 Adams St)	Higinbotham & Higinbotham
			Compton Assoc, PLLC
48	Fleming Building	222 Monroe St (200 Adams St)	C&A Enterprises
			Charlie Anderson Attorney
52		Washington St	Hodges & Riffle
55		219-221 Jefferson St	Vanessa Rodriguez Law Office
56	Haymond Building	225-229 Jefferson St	Whiteman, Burdette PLLC
			Kristine Burdette
			Frances Whiteman
57	Comerford Building	234 Adams St-236 Adams	Classics Café
			A H Properties, rentals
58	Fleming Building	226-230 Adams St	Minards Bail Bonding
			Bill's Bail Bonds
60	McCrary Building	218 Adams St	Dollar General
			Harvey Havlichek
61	T.F. Hall Building	214 Adams St (216 Adams St)	? Watsons Coins
62	Adams Office Building	210-212 Adams St	Adams Office Supply
			Hamner Psychological Svcs
63		208 Adams St	Fashion Scene
		208 1/2 Adams St	Big Guys Advertising
			Scott A. Shough
65	Security Bank Building	209 Adams St	H S Property, rentals
68	Watson Building	301 Adams St	Gary Martino, Atty
			WesBanco Bank, Inc.
			Rose Padden & Petty
			David B DeMoss
			Susan McLaughlin
			Marcy R Carroll
			Erik K Wildman
			Heidi Georgi Sturm
			Tharp Liotta & Yocum
			Stanton Law Firm
70	Slock's Club	323 1/2 Adams St	FireHouse Café
71	Holt-Rowe Building/Alfie's	325 Adams St (327 Adams St)	Paul Belczyk-GRK Dev?
77	Murphy's Building	310-320 Adams St (320 Adams St)	Veteran's Square II-McCabe

FAIRMONT DOWNTOWN HISTORIC DISTRICT
 CONTRIBUTING STRUCTURES OCCUPIED BY BUSINESSES
 FEBRUARY 3, 2014

Illustration C

CONTRIBUTING STRUCTURE			BUSINESS
NUMBER	NAME	ADDRESS	NAME
79		306 Adams St	TG' Lounge and Café
80	Christie's Drugs/Hartley's	300-302 Adams St	Law Office of CM Wilson
			Seseen Francis-Rental
81	Elks Club	421 Adams St (419 Adams St)	Adams Charitable
88	Armory	8 Locust Ave	Wayne's Body Shop
90	Rhea Terrace Apartments	11-15 Locust Ave	APF Corporation-rentals
108	Frey Funeral Home	320 Madison St	Frey Funeral Home
117	Jacob-Hutchinson Block & Jacobs Building	201-207 Adams St & 312-316 Monroe St	Friendly Furniture
		201 Adams St	D J Energy Resoures Inc
120	Hennen Building	120 Adams St (118 Adams St)	McCabe Land Co
127		310 Adams St	Ron L Tucker

55 businesses located in historical structures averaging \$2,043.29 in annual Business & Occupation Tax payments

FAIRMONT DOWNTOWN HISTORIC DISTRICT
CONTRIBUTING VACANT STRUCTURES
FEBRUARY 3, 2014

Illustration D

CONTRIBUTING STRUCTURE		
<u>NUMBER</u>	<u>NAME</u>	<u>ADDRESS</u>
11		107 Fairmont Ave
13	Yost Building	103-105 Fairmont Ave
14	Old Post Office	200 Fairmont Ave
16	YMCA/Moose Hall	100 Fairmont Ave
17		94 Fairmont Ave
19		507-511 First St
20	WCTU Building	99 Fairmont Ave
29	Hays Building	225 Cleveland Ave
31	Jacob -Hutchinson Warehouse	233-235 Cleveland Ave
32	Jacob-Hutchinson Offices	231 Cleveland Ave
35	Monongahela Bridge	Jefferson St
37		314 Washington St
39	WPA Retaining Wall	Jefferson and Washington Streets
44	City Fire and Police Building	211-215 Monroe St
45	Hays Building	217 Monroe St
49	Methodist Protestant Temple	216-218 Monroe St
50	Bell Telephone Building	214 Monroe St
53	Eastview Unity/Fairmont Hotel	200-214 Jefferson St
78	Chisler Building	308 Adams St
89		337 Cleveland Ave
91	Trinity Church	407 Cleveland Ave
93		117 Jackson St
94	Jackson -Dotts Building & Kisner Bldg	116 Jackson St & 120 Jackson St
95		401 Monroe St
97		213 Jackson St
105		Madison and Quincy Streets
113		324 Jefferson St
114	Masonic Temple Building	316-320 Jefferson St
116	Marion County Jail	rear of 215 Adams St
121	Skinner Building	110 Adams St
128	Marietta Hotel Annex	124 Adams St
129	Infill	122 Adams St
130		416 Madison St
132		170 Jefferson St

32 vacant historical structures for potential reoccupancy

City of Fairmont
Example of Historic District Tax Credit
Applied to Qualifying Structure

Illustration E

B & O Tax Liability:		Gross	Tax at \$0.39/\$100
		<u>Receipts</u>	<u>Retail Classification</u>
	Q1 FY12	\$ 399,300.00	\$ 1,557.27
	Q2 FY12	\$ 297,500.00	\$ 1,160.25
	Q3 FY12	\$ 297,600.00	\$ 1,160.64
	Q4 FY12	\$ 305,500.00	\$ 1,191.45
	Total FY12		\$ 5,069.61
	Q1 FY13	\$ 307,700.00	\$ 1,200.03
	Q2 FY13	\$ 305,500.00	\$ 1,191.45
	Q3 FY13	\$ 300,400.00	\$ 1,171.56
	Q4 FY13	\$ 306,800.00	\$ 1,196.52
	Total FY13		\$ 4,759.56
	Estimate FY14 - FY21:	\$	4,914.59

Improvements to Qualified Structure: \$ 300,000.00

B&O Tax Credits on \$300,000 improvements on Qualifying Structure:

Year One:	\$	5,069.61	100%
Year Two:	\$	4,759.56	100%
Year Three:	\$	4,914.59	100%
Year Four:	\$	2,457.29	50%
Year Five:	\$	2,457.29	50%
Year Six:	\$	1,228.65	25%
Year Seven:	\$	1,228.65	25%
Year Eight:	\$	1,228.65	25%
Year Nine:	\$	1,228.65	25%
Year Ten:	\$	1,228.65	25%
	\$	<u>25,801.57</u>	

City of Fairmont
Example of B&O Tax Credit Allowed for Increased Cost of Payroll
Home Rule Application

Illustration F

Payroll Cost FY13: \$ 6,204,267
Number of Employees: 309

Hire 50 additional employees July 1, 2013:

Estimated Payroll Cost FY14: \$ 7,208,194
Number of Employees: 359

Added Payroll Cost: \$ 1,003,927
16%

B&O Tax Reported on Service Sales:

	Sales	Tax at \$0.70
Q1 FY13	\$ 2,621,112	\$ 18,347.78
Q2 FY13	\$ 2,639,085	\$ 18,473.60
Q3 FY13	\$ 2,738,359	\$ 19,168.51
Q4 FY13	\$ 2,552,919	\$ 17,870.43
Total FY13	\$ 10,551,475	\$ 73,860.33

Increased Revenue Estimate:

Q1 FY14	\$ 3,003,414	\$ 21,023.90
Q2 FY14	\$ 3,003,414	\$ 21,023.90
Q3 FY14	\$ 3,003,414	\$ 21,023.90
Q4 FY14	\$ 3,003,414	\$ 21,023.90
Estimate FY14	\$ 12,013,657	\$ 84,095.60

14%

B&O Tax Credits on \$1,003,927 in increased payroll cost:

Year One:	\$ 84,095.60	100%
Year Two:	\$ 42,047.80	50%
Year Three:	\$ 42,047.80	50%
Year Four:	\$ 42,047.80	50%
Year Five:		50%
Year Six:		40%
Year Seven:		30%
Year Eight:		20%
Year Nine:		10%
Year Ten:		10%
Total Credits allowed:	<u>\$ 210,238.99</u>	

Fiscal Impact Worksheet

FISCAL IMPACT WORKSHEET FOR PROBLEM AND PROPOSED SOLUTION

Municipality: Fairmont, West Virginia

Person who prepared fiscal statement: Eileen Layman

Telephone number: 304-366-6211 ext 322

Email address: elayman@fairmontwv.gov

Problem Number: 1 and Solution 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 proposed expanded B&O Tax Credits would initially reduce revenues of the City, but through the adoption of the four (4) new credits the City projects revenue to ultimately increase as a result of new businesses locating in Fairmont, and existing businesses expanding and remaining in the City. The implementation of a B&O Tax Credit for the re-occupancy of vacant property would also ultimately yield increased revenue for the City in the form of ad valorem receipts.

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.

The solutions proposed by the City would have beneficial impacts to both the residents and businesses of the City. With the expansion of B&O Tax Credits, businesses are incentivized to locate, grow and remain in the City through the elimination and reduction of rates, thus benefiting our residents through employment opportunities and the ability to receive goods and services locally. The proposed B&O Tax Credit for the re-occupancy of vacant structures will significantly benefit our residents who no longer have to live next to the present eyesores.

Fiscal Impact Worksheet

B. Fiscal Impact Detail – Municipality

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	Minimal	Minimal
a. Personal Services	N/A	N/A
b. Current Expenses	Minimal	Minimal
c. Repairs & Alterations	N/A	N/A
d. Assets	N/A	N/A
e. Other	N/A	N/A
2. Estimated Total Revenue Gain	See Below	See Below
3. Estimated Total Revenue Loss	See Below	See Below

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

Without knowing which businesses may choose to take advantage of the tax credits

it is impossible to estimate the amount of total revenue the City will gain or lose.

Worksheets illustrating the potential benefit to the taxpayer have been prepared and are
found in Tab E Section II Written Narrative Proposal 1. Expanded B&O Tax Credits.

Ultimately, the City expects the program to be revenue neutral.

Fiscal Impact Worksheet

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?

Existing Businesses, new businesses and residents.

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

The City anticipates the impacts of the proposed solutions to be beneficial to the businesses and residents.

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

Municipalities located adjacent to the corporate limits of Fairmont currently do not have a B&O Tax system which encourages businesses to locate outside of Fairmont.

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

There are no perceived negative impacts at this time.

D. Additional Information

THE CITY OF FAIRMONT MUNICIPAL HOME RULE PLAN

SECTION II WRITTEN NARRATIVE

PROPOSAL 2. IMPOSITION OF A SALES & USE TAX (Tax)

Specific state laws, policies, rules or regulations

W. Va. Code §8-13-1 et seq., §8-13C-1- 1 et seq., and in particular §8-13C-4(b) and §8-13C-5(b)

Problem: State law currently unduly restricts the ability of the City of Fairmont to generate sufficient revenues to (1) pay for the City's underfunded pension liabilities, (2) return under-utilized land to productive use by demolishing dilapidated, unsafe building and structures, and (3) fund programs designed to grow and diversify the City's economic base and make the City a more desirable place in which to live and do business.

- A. Pensions: The attached exhibits demonstrate the extreme inadequacies of the current funding methods used by the City to fund its Fire and Police Pension Plans. Using the current, Alternative Funding Method, in FY15 the City will contribute 10% of its entire General Fund budget to the two pension plans. And these contributions will continue to grow by 7% annually. In addition, the plans are both severely underfunded as reported in the Actuarial Valuation Report of the Fairmont Firemen's Pension and Relief Fund dated July 1, 2012, and the Actuarial Valuation Report of the Fairmont Policemen's Pension and Relief Fund dated July 1, 2012. Funding levels are reported at 5% and 15.92% respectively. The City has seen a strain on its operating budgets in meeting past and current funding levels and foresees that a new funding source is needed to satisfy future funding requirements. The City believes that it would be in the best interest of active and future pensioners to close its existing plans and move future employees into the Municipal Police Officers and Firefighters Retirement System. By means of actuarial tables using the Conservation Funding Method, a cost projection was prepared. The projection of increased pension cost is intended to demonstrate the need for and therefore the purpose of proposing implementation of a Consumers Sales and Use Tax in the City of Fairmont.

Illustration A – Page 2 of City of Fairmont Firemen's Pension and Relief Fund Actuarial Study, by *Gabriel, Roeder, Smith and Company* dated July 1, 2012: This illustration provides the funded status of the City of Fairmont Firemen's Pension and Relief Fund as of the date of preparation.

Illustration B – City of Fairmont Firemen's Pension and Relief Fund – Conservation Funding Method to Close Plan: This illustration compares the City's contributions under the alternative funding method currently used to the City's required contributions under the conservation funding method.

Illustration C. – Page 2 of City of Fairmont Policemen’s Pension and Relief Fund Actuarial Study, by *Gabriel, Roeder, Smith and Company* dated July 1, 2012: This illustration provides the funded status of the City of Fairmont Policemen’s Pension and Relief Fund as of the date of preparation.

Illustration D – City of Fairmont Policemen’s Pension and Relief Fund – Conservation Funding Method to Close Plan: This illustration compares the City’s contributions under the alternative funding method currently used to the City’s required contributions under the conservation funding method.

- B. Vacant and Dilapidated Structures: The City of Fairmont has experienced a decline similar to that suffered by many West Virginia communities caused by chronic long-term economic dislocation and the loss of high wage manufacturing jobs over several decades in the last century, which decline is particularly apparent in the oldest areas of the City of Fairmont, including, but not limited to the City’s downtown historic center, its former industrial areas, and many of its original residential neighborhoods. Particularly in the areas aforementioned, the economic decline has resulted in a loss of population, reduced property maintenance, and in some instances vacant, abandoned and/or dilapidated structures. The City’s lack of resources in general has not allowed for a properly administered plan of demolition. For FY 2013 the City funded a single demolition project in the amount of \$20,999. For FY 2014, year to date the City has funded two demolition projects in the amount of \$59,750. Earmarking a portion of a new revenue source would benefit the plan and allow for continued demolition projects and improvement in our neighborhoods and commercial and industrial areas. Therefore, the City desires to set aside a portion of a newly implemented Consumers Sales and Use Tax for funding the demolition of blighted and dilapidated structures.
- C. West Virginia law currently limits both the types of taxes a municipality may impose and the rates at which those taxes may be imposed. More specifically, the taxes a municipality may impose are limited to those specified in W. Va. Code § 8-13-1 *et seq.* and W. Va. Code § 8-13C-1 *et seq.*

The primary business tax imposed by the City is the business and occupation tax, which is similar to the State business and occupation tax in effect prior to July 1, 1987. State law specifies the classifications of business activities upon which the City may impose its business and occupation tax and specifies the maximum rates that may be levied which, except in a couple of instances, are the primary State tax rate for those classifications in effect on January 1, 1959. Not all business activities were subject to the State business and occupation tax. Consequently, not all business activities engaged in within the City are subject to the City’s business and occupation tax.

The State effectively repealed its business and occupation taxes on most business classifications effective July 1, 1987, in response to the 1984 final report of the West Virginia Tax Study Commission entitled “A tax study for West Virginia in the 1980’s: equity for taxpayers, efficiency in administration, incentives for development: final report to the West Virginia Legislature.” That report recommended that the Legislature replace both State and municipal business and occupation taxes. As previously mentioned, although the Legislature effectively repealed the State business

and occupation tax for most businesses effective July 1, 1987, the Legislature has provided municipalities with no suitable alternative taxes. In 2004, the Legislature enacted W. Va. Code § 8-13C-1 *et seq.*, which allows municipalities to impose 1% sales and use taxes **provided** they repeal their business and occupation tax. In most instances, and specifically in the case of the City of Fairmont, the amount of business and occupation taxes received under the service business classification of the tax far outweighs the revenue that would be generated from 1% sales and use taxes. Consequently, under current law, the City of Fairmont cannot afford to utilize the only tax alternative available to the City. The primary reason for repealing the State business and occupation tax is also the reason why alternative revenue sources need to be found for municipal business and occupation taxes – the taxes are a disincentive to economic growth and jobs creation in the City. For example, the taxes are measured by gross receipts from business activity, whether or not the business makes a profit. Additionally, the business and occupation tax encourages business growth and expansion on the other side of the city line to the detriment of the City's economic base. Further, in many instances, the City of Fairmont does not impose its business and occupation taxes at the maximum rates allowed by State law for the reasons discussed above.

Solution: The City of Fairmont proposes to and seeks approval for the imposition of 1% sales and use taxes which will, among other purposes:

1. Allow the City to reduce the rates of business and occupation tax levied on its retail sales classification and eliminate the business and occupation tax levied on its wholesale and manufacturing classifications.
2. Generate new revenue to pay its unfunded liabilities under its policemen's and firemen's pension plans; and
3. Provide additional resources to tear down dilapidated, uninhabited buildings and structures that are unsafe, eyesores and negatively affect property values in the City, thereby freeing up land resources for future development.

As required by West Virginia Code §8-1-5a(k)(6), in conjunction with the City's request for authority to impose 1% sales and use taxes, the City is proposing to reduce the rate of its business and occupation tax under the retail sales classification from .39% to .35%, which results in a reduction of revenue of approximately \$75,000 per year. Additionally, the City is proposing to eliminate the business and occupation tax under the wholesale and manufacturing classifications, which results in a further reduction of revenue of approximately \$147,000 in the wholesale classification and \$122,000 in the manufacturing classification. The total projected reduction in business and occupation tax revenue is \$344,000 annually. Additionally, in a separate proposal, the City requests authority to allow certain additional credits against its business and occupation tax. Collectively, these rate reductions and tax credits provide responsible business tax relief to grow the City's economic base.

Illustration E – B & O Tax Trend Report: This illustration reflects a ten (10) year average of the City of Fairmont's business and occupation tax receipts by category.

Illustration F – Calculation of Estimated Reduction of B & O Tax Revenues: This illustration reflects the projected loss of revenue from the elimination of the wholesale and manufacturing classifications and the loss of revenue resulting from the reduction of the retail classification.

Illustration G - Calculation of Estimated Revenues Resulting from 1% Sales & Use Tax: This illustration reflects the estimated revenues to be generated from the imposition of the City of Fairmont's proposed 1% sales and use tax.

The City's sales and use taxes will be administered, collected and enforced by the State Tax Department. With limited exceptions, the State and City sales tax base will be identical. Therefore, a transaction exempt from State sales tax will also be exempt from City sales tax.

Illustration H - The requested sales tax feasibility study which provides additional information regarding the proposed business and occupation tax rate reduction and sales and use taxes imposed at a 1% rate.

City of Fairmont Firemen's Pension and Relief Fund
Actuarial Study as of July 1, 2012

The following table provides the Plan's funded status:

Funded Status as of:	July 1, 2012
Assets	\$1,734,688
Actuarial Liabilities	\$33,732,823
Unfunded Liabilities	\$31,998,135
Funded Ratio	5.14%

The following table provides the employer contributions for the fiscal year ending June 30, 2013, under the Alternative Method:

Employer Contributions for FYE:	June 30, 2013
FYE 06/30/2012 Alternative Contribution	\$703,809
7% Increase in Alternative Contribution	\$49,267
FYE 06/30/2013 Alternative Contribution	\$753,076
Additional Contribution	\$32,103
Final FYE 06/30/2013 Alternative Contribution	\$785,179

We understand that the City of Fairmont made an additional contribution of \$32,103 in excess of the minimum alternative contribution for FYE 2013. The following table provides the estimated employer contributions for the fiscal year ending June 30, 2014, under the Alternative Method:

Estimated Employer Contributions for FYE:	June 30, 2014
FYE 06/30/2013 Alternative Contribution	\$753,076
7% Increase in Alternative Contribution	\$52,715
FYE 06/30/2014 Alternative Contribution	\$805,791
Additional Contribution to satisfy 15-year Solvency Test on an Open Group Basis (to receive 100% of the State Premium Tax Allocation)	\$0
Estimated Employer Contribution for FYE 06/30/2014 to receive 100% of the State Premium Tax Allocation	\$805,791
Additional Contribution to satisfy 15-year Solvency Test on a Closed Group Basis (to grant Supplemental Benefits, i.e. COLA increases)	\$69,200
Estimated Employer Contribution for FYE 06/30/2014 to receive 100% of the State Premium Tax Allocation and to grant Supplemental Benefits, i.e. COLA increases	\$874,991

**CITY OF FAIRMONT
FIREMEN'S PENSION FUND
CONSERVATION FUNDING METHOD-CLOSE PLAN**

Illustration B

	Alternative Funding	PAYGO Employer Contributions	Statewide Employer Contribution New at 10.5%	Total	Increase Pension Cost
City Pension Obligation FY12	\$ 703,809	\$ 704,000		\$ 704,000	\$ 191
City Pension Obligation FY13	\$ 753,076	\$ 785,000	\$ -	\$ 785,000	\$ 31,924
City Pension Obligation FY14	\$ 805,791	\$ 1,256,000	\$ 10,000	\$ 1,266,000	\$ 460,209
City Pension Obligation FY15	\$ 862,196	\$ 1,306,000	\$ 21,000	\$ 1,327,000	\$ 464,804
City Pension Obligation FY16	\$ 922,550	\$ 1,337,000	\$ 30,000	\$ 1,367,000	\$ 444,450
City Pension Obligation FY17	\$ 987,129	\$ 1,346,000	\$ 37,000	\$ 1,383,000	\$ 395,871
City Pension Obligation FY18	\$ 1,056,228	\$ 1,365,000	\$ 41,000	\$ 1,406,000	\$ 349,772
City Pension Obligation FY19	\$ 1,130,164	\$ 1,417,000	\$ 51,000	\$ 1,468,000	\$ 337,836
City Pension Obligation FY20	\$ 1,209,275	\$ 1,468,000	\$ 66,000	\$ 1,534,000	\$ 324,725
City Pension Obligation FY21	\$ 1,293,924	\$ 1,517,000	\$ 77,000	\$ 1,594,000	\$ 300,076
City Pension Obligation FY22	\$ 1,384,499	\$ 1,579,000	\$ 93,000	\$ 1,672,000	\$ 287,501
City Pension Obligation FY23	\$ 1,481,414	\$ 1,641,000	\$ 107,000	\$ 1,748,000	\$ 266,586
City Pension Obligation FY24	\$ 1,585,113	\$ 1,708,000	\$ 125,000	\$ 1,833,000	\$ 247,887
City Pension Obligation FY25	\$ 1,696,071	\$ 1,785,000	\$ 142,000	\$ 1,927,000	\$ 230,929
City Pension Obligation FY26	\$ 1,814,796	\$ 1,904,000	\$ 164,000	\$ 2,068,000	\$ 253,204
City Pension Obligation FY27	\$ 1,941,832	\$ 2,024,000	\$ 195,000	\$ 2,219,000	\$ 277,168
City Pension Obligation FY28	\$ 2,077,760	\$ 2,090,000	\$ 218,000	\$ 2,308,000	\$ 230,240
City Pension Obligation FY29	\$ 2,223,203	\$ 2,141,000	\$ 235,000	\$ 2,376,000	\$ 152,797
City Pension Obligation FY30	\$ 2,378,827	\$ 2,190,000	\$ 254,000	\$ 2,444,000	\$ 65,173
City Pension Obligation FY31	\$ 2,545,345	\$ 2,218,000	\$ 271,000	\$ 2,489,000	\$ (56,345)
City Pension Obligation FY32	\$ 2,723,519	\$ 2,228,000	\$ 288,000	\$ 2,516,000	\$ (207,519)
City Pension Obligation FY33	\$ 2,914,165	\$ 2,220,000	\$ 303,000	\$ 2,523,000	\$ (391,165)
City Pension Obligation FY34	\$ 3,118,157	\$ 2,203,000	\$ 315,000	\$ 2,518,000	\$ (600,157)
City Pension Obligation FY35	\$ 3,336,428	\$ 2,194,000	\$ 329,000	\$ 2,523,000	\$ (813,428)
City Pension Obligation FY36	\$ 3,569,978	\$ 2,191,000	\$ 346,000	\$ 2,537,000	\$ (1,032,978)
City Pension Obligation FY37	\$ 3,819,876	\$ 2,173,000	\$ 364,000	\$ 2,537,000	\$ (1,282,876)
City Pension Obligation FY38	\$ 4,087,267	\$ 2,181,000	\$ 380,000	\$ 2,561,000	\$ (1,526,267)
City Pension Obligation FY39	\$ 4,373,376	\$ 2,133,000	\$ 395,000	\$ 2,528,000	\$ (1,845,376)
City Pension Obligation FY40	\$ 4,679,512	\$ 2,070,000	\$ 409,000	\$ 2,479,000	\$ (2,200,512)
City Pension Obligation FY41	\$ 5,007,078	\$ 1,996,000	\$ 423,000	\$ 2,419,000	\$ (2,588,078)
City Pension Obligation FY42	\$ 5,357,573	\$ 1,921,000	\$ 437,000	\$ 2,358,000	\$ (2,999,573)
City Pension Obligation FY43	\$ 5,732,603	\$ 1,844,000	\$ 452,000	\$ 2,296,000	\$ (3,436,603)
City Pension Obligation FY44	\$ 6,133,885	\$ 1,757,000	\$ 466,000	\$ 2,223,000	\$ (3,910,885)
City Pension Obligation FY45	\$ 6,563,257	\$ 1,664,000	\$ 481,000	\$ 2,145,000	\$ (4,418,257)
City Pension Obligation FY46	\$ 7,022,685	\$ 1,568,000	\$ 496,000	\$ 2,064,000	\$ (4,958,685)
City Pension Obligation FY47	\$ 7,514,273	\$ 1,470,000	\$ 511,000	\$ 1,981,000	\$ (5,533,273)
City Pension Obligation FY48	\$ 8,040,272	\$ 943,000	\$ 526,000	\$ 1,469,000	\$ (6,571,272)
City Pension Obligation FY49	\$ 8,603,091	\$ 7,000	\$ 542,000	\$ 549,000	\$ (8,054,091)
City Pension Obligation FY50	\$ 9,205,307	\$ 6,000	\$ 558,000	\$ 564,000	\$ (8,641,307)
City Pension Obligation FY51	\$ 9,849,678	\$ 6,000	\$ 575,000	\$ 581,000	\$ (9,268,678)
		\$ -			

Establish a Benefit Payment Account (from which all current expenses are paid)

100% of City contributions deposited for PAYGO (amount based on annual actuarial valuation)

From 5.5% up to 8% of employee contributions are deposited for PAYGO (employees at 7% and 9.5%)

78% of State Premium Tax Allocation deposited for PAYGO (percentage based on annual actuarial valuation)

Accumulation Account (fund to fully funded status; no withdrawals until fully funded)

1.5% of employee contributions are deposited for amortization of unfunded liability

22% of State Premium Tax Allocation deposited for amortization of unfunded liability (percentage based on annual actuarial valuation)

Investment income used for amortization of unfunded liability

City of Fairmont Policemen's Pension and Relief Fund
Actuarial Study as of July 1, 2012

The following table provides the Plan's funded status:

Funded Status as of:	July 1, 2012
Assets	\$3,872,522
Actuarial Liabilities	\$24,325,575
Unfunded Liabilities	\$20,453,053
Funded Ratio	15.92%

The following table provides the employer contributions for the fiscal year ending June 30, 2013, under the Alternative Method:

Employer Contributions for FYE:	June 30, 2013
FYE 06/30/2012 Alternative Contribution	\$509,443
7% Increase in Alternative Contribution	\$35,661
FYE 06/30/2013 Alternative Contribution	\$545,104
Additional Contribution	\$32,103
Final FYE 06/30/2013 Alternative Contribution	\$577,207

We understand that the City of Fairmont made an additional contribution of \$32,103 in excess of the minimum alternative contribution for FYE 2013. The following table provides the estimated employer contributions for the fiscal year ending June 30, 2014, under the Alternative Method:

Estimated Employer Contributions for FYE:	June 30, 2014
FYE 06/30/2013 Alternative Contribution	\$545,104
7% Increase in Alternative Contribution	\$38,157
FYE 06/30/2014 Alternative Contribution	\$583,261
Additional Contribution to satisfy 15-year Solvency Test on an Open Group Basis (to receive 100% of the State Premium Tax Allocation)	\$0
Estimated Employer Contribution for FYE 06/30/2014 to receive 100% of the State Premium Tax Allocation	\$583,261
Additional Contribution to satisfy 15-year Solvency Test on a Closed Group Basis (to grant Supplemental Benefits, i.e. COLA increases)	\$0
Estimated Employer Contribution for FYE 06/30/2014 to receive 100% of the State Premium Tax Allocation and to grant Supplemental Benefits, i.e. COLA increases	\$583,261

A sponsor using the alternative method must satisfy the solvency test, as referenced in West Virginia Code section 8-22-20 (c)(1) in order to receive 100% of the State premium tax allocation, or grant

**CITY OF FAIRMONT
POLICEMEN'S PENSION FUND
CONSERVATION FUNDING METHOD-CLOSE PLAN**

Illustration D

	Alternative Funding	Employer Contributions	Statewide Employer Contribution New at 10.5%	Total	Increase Pension Cost
City Pension Obligation FY12	\$ 509,443	\$ 509,443		\$ 509,443	\$ -
City Pension Obligation FY13	\$ 545,104	\$ 577,000	\$ -	\$ 577,000	\$ 31,896
City Pension Obligation FY14	\$ 583,261	\$ 674,000	\$ 4,000	\$ 678,000	\$ 94,739
City Pension Obligation FY15	\$ 624,089	\$ 695,000	\$ 8,000	\$ 703,000	\$ 78,911
City Pension Obligation FY16	\$ 667,775	\$ 738,000	\$ 17,000	\$ 755,000	\$ 87,225
City Pension Obligation FY17	\$ 714,519	\$ 774,000	\$ 27,000	\$ 801,000	\$ 86,481
City Pension Obligation FY18	\$ 764,535	\$ 832,000	\$ 35,000	\$ 867,000	\$ 102,465
City Pension Obligation FY19	\$ 818,052	\$ 913,000	\$ 52,000	\$ 965,000	\$ 146,948
City Pension Obligation FY20	\$ 875,316	\$ 985,000	\$ 68,000	\$ 1,053,000	\$ 177,684
City Pension Obligation FY21	\$ 936,588	\$ 1,040,000	\$ 85,000	\$ 1,125,000	\$ 188,412
City Pension Obligation FY22	\$ 1,002,149	\$ 1,072,000	\$ 96,000	\$ 1,168,000	\$ 165,851
City Pension Obligation FY23	\$ 1,072,299	\$ 1,095,000	\$ 106,000	\$ 1,201,000	\$ 128,701
City Pension Obligation FY24	\$ 1,147,360	\$ 1,110,000	\$ 115,000	\$ 1,225,000	\$ 77,640
City Pension Obligation FY25	\$ 1,227,675	\$ 1,129,000	\$ 123,000	\$ 1,252,000	\$ 24,325
City Pension Obligation FY26	\$ 1,313,612	\$ 1,168,000	\$ 134,000	\$ 1,302,000	\$ (11,612)
City Pension Obligation FY27	\$ 1,405,565	\$ 1,198,000	\$ 148,000	\$ 1,346,000	\$ (59,565)
City Pension Obligation FY28	\$ 1,503,955	\$ 1,230,000	\$ 158,000	\$ 1,388,000	\$ (115,955)
City Pension Obligation FY29	\$ 1,609,232	\$ 1,303,000	\$ 173,000	\$ 1,476,000	\$ (133,232)
City Pension Obligation FY30	\$ 1,721,878	\$ 1,361,000	\$ 194,000	\$ 1,555,000	\$ (166,878)
City Pension Obligation FY31	\$ 1,842,409	\$ 1,376,000	\$ 208,000	\$ 1,584,000	\$ (258,409)
City Pension Obligation FY32	\$ 1,971,378	\$ 1,368,000	\$ 218,000	\$ 1,586,000	\$ (385,378)
City Pension Obligation FY33	\$ 2,109,374	\$ 1,365,000	\$ 228,000	\$ 1,593,000	\$ (516,374)
City Pension Obligation FY34	\$ 2,257,030	\$ 1,384,000	\$ 240,000	\$ 1,624,000	\$ (633,030)
City Pension Obligation FY35	\$ 2,415,022	\$ 1,399,000	\$ 256,000	\$ 1,655,000	\$ (760,022)
City Pension Obligation FY36	\$ 2,584,074	\$ 1,411,000	\$ 268,000	\$ 1,679,000	\$ (905,074)
City Pension Obligation FY37	\$ 2,764,959	\$ 1,432,000	\$ 285,000	\$ 1,717,000	\$ (1,047,959)
City Pension Obligation FY38	\$ 2,958,506	\$ 1,432,000	\$ 300,000	\$ 1,732,000	\$ (1,226,506)
City Pension Obligation FY39	\$ 3,165,601	\$ 1,430,000	\$ 314,000	\$ 1,744,000	\$ (1,421,601)
City Pension Obligation FY40	\$ 3,387,193	\$ 1,420,000	\$ 330,000	\$ 1,750,000	\$ (1,637,193)
City Pension Obligation FY41	\$ 3,624,297	\$ 1,395,000	\$ 344,000	\$ 1,739,000	\$ (1,885,297)
City Pension Obligation FY42	\$ 3,877,998	\$ 1,395,000	\$ 358,000	\$ 1,753,000	\$ (2,124,998)
City Pension Obligation FY43	\$ 4,149,458	\$ 1,349,000	\$ 371,000	\$ 1,720,000	\$ (2,429,458)
City Pension Obligation FY44	\$ 4,439,920	\$ 1,296,000	\$ 384,000	\$ 1,680,000	\$ (2,759,920)
City Pension Obligation FY45	\$ 4,750,714	\$ 1,237,000	\$ 396,000	\$ 1,633,000	\$ (3,117,714)
City Pension Obligation FY46	\$ 5,083,264	\$ 686,000	\$ 409,000	\$ 1,095,000	\$ (3,988,264)
City Pension Obligation FY47	\$ 5,439,092	\$ 7,000	\$ 421,000	\$ 428,000	\$ (5,011,092)
City Pension Obligation FY48	\$ 5,819,828	\$ 6,000	\$ 434,000	\$ 440,000	\$ (5,379,828)
City Pension Obligation FY49	\$ 6,227,216	\$ -	\$ 447,000	\$ 447,000	\$ (5,780,216)
City Pension Obligation FY50	\$ 6,663,121	\$ -	\$ 461,000	\$ 461,000	\$ (6,202,121)
City Pension Obligation FY51	\$ 7,129,539	\$ -	\$ 474,000	\$ 474,000	\$ (6,655,539)

Establish a Benefit Payment Account (from which all current expenses are paid)

100% of City contributions deposited for PAYGO (amount based on annual actuarial valuation)

From 5.5% up to 8% of employee contributions are deposited for PAYGO (employees at 7% and 9.5%)

100% of State Premium Tax Allocation deposited for PAYGO (percentage based on annual actuarial valuation)

Accumulation Account (fund to fully funded status; no withdrawals until fully funded)

1.5% of employee contributions are deposited for amortization of unfunded liability

0% of State Premium Tax Allocation deposited for amortization of unfunded liability (percentage based on annual actuarial valuation)

Investment income used for amortization of unfunded liability

CITY OF FAIRMONT
B & O TAX TREND REPORT
TAX REPORTED BY CATEGORY

	22 MANUFACTURING	39 RETAILERS	15 WHOLESALE	1.0 TO 4.0 PUBLIC UTILITIES	2.0 CONTRACTING	1.0 BANK LOANS	44 AMUSEMENT	70 SERVICE	1.0 RENTS	TOTAL
Ten Year Ave	\$ 121,873	\$ 732,957	\$ 147,156	\$ 835,419	\$ 1,505,224	\$ 205,038	\$ 2,520	\$ 1,463,694	\$ 259,293	\$ 5,334,174
FY13	\$ 107,429	\$ 828,916	\$ 196,609	\$ 919,821	\$ 2,391,440	\$ 194,555	\$ 2,980	\$ 1,360,014	\$ 229,813	\$ 6,231,578
FY12	\$ 108,125	\$ 819,417	\$ 173,182	\$ 863,260	\$ 1,947,233	\$ 201,240	\$ 1,859	\$ 1,557,881	\$ 259,477	\$ 5,931,673
FY11	\$ 146,464	\$ 782,809	\$ 144,111	\$ 918,572	\$ 1,611,397	\$ 200,980	\$ 2,037	\$ 1,741,245	\$ 266,052	\$ 5,813,665
FY10	\$ 137,755	\$ 758,114	\$ 131,845	\$ 806,293	\$ 1,305,896	\$ 201,427	\$ 2,770	\$ 1,641,427	\$ 284,570	\$ 5,270,098
FY09	\$ 148,550	\$ 715,934	\$ 144,653	\$ 894,853	\$ 493,320	\$ 195,484	\$ 2,348	\$ 1,652,976	\$ 308,295	\$ 4,556,414
FY08	\$ 103,957	\$ 650,253	\$ 116,946	\$ 669,047	\$ 1,113,037	\$ 201,910	\$ 2,162	\$ 1,401,379	\$ 259,492	\$ 5,139,166
FY07	\$ 123,450	\$ 696,373	\$ 147,021	\$ 914,297	\$ 1,616,421	\$ 237,725	\$ 2,279	\$ 1,457,453	\$ 244,499	\$ 5,439,518
FY06	\$ 133,628	\$ 705,722	\$ 157,417	\$ 811,077	\$ 1,429,638	\$ 219,619	\$ 2,335	\$ 1,288,068	\$ 247,002	\$ 4,994,506
FY05	\$ 111,064	\$ 678,146	\$ 140,806	\$ 814,479	\$ 1,906,011	\$ 197,595	\$ 3,194	\$ 1,230,169	\$ 270,479	\$ 5,351,943
FY04	\$ 96,332	\$ 684,883	\$ 118,972	\$ 742,489	\$ 1,237,843	\$ 199,844	\$ 3,236	\$ 1,306,324	\$ 223,250	\$ 4,613,174
FY03	\$ 93,681	\$ 654,599	\$ 100,321	\$ 776,571	\$ 858,539	\$ 204,748	\$ 3,230	\$ 1,368,232	\$ 250,635	\$ 4,308,556
FY02	\$ 101,513	\$ 634,114	\$ 106,381	\$ 699,459	\$ 502,202	\$ 236,876	\$ 3,382	\$ 1,155,073	\$ 212,054	\$ 3,651,054
FY01	\$ 106,612	\$ 599,137	\$ 88,547	\$ 702,215	\$ 469,780	\$ 210,061	\$ 3,877	\$ 1,094,115	\$ 176,765	\$ 3,451,110
FY00	\$ 159,833	\$ 603,165	\$ 69,975	\$ 689,575	\$ 288,310	\$ 195,644	\$ 3,981	\$ 901,597	\$ 111,786	\$ 3,023,867
FY99	\$ 128,744	\$ 588,544	\$ 70,124	\$ 677,569	\$ 270,966	\$ 189,664	\$ 4,039	\$ 727,329	\$ 102,449	\$ 2,759,427
FY98	\$ 88,105	\$ 615,458	\$ 77,683	\$ 663,320	\$ 263,970	\$ 192,339	\$ 3,973	\$ 636,530	\$ 104,929	\$ 2,646,306

Illustration F

City of Farimont
Calculation of Estimated Reduction of B&O Tax Revenue
Home Rule Application

Current Business & Occupation Tax Collections:

	10 Year Average Tax Collections	Rate per \$100 of Sales
Contracting	\$ 1,505,224	2.00
Service	\$ 1,463,694	0.70
Public Utilities	\$ 835,419	1.0 to 4.0
Retailers	\$ 732,057	0.39
Rents	\$ 259,293	1.00
Bank Loans	\$ 205,038	1.00
Wholesalers	\$ 147,156	0.15
Manufacturing	\$ 121,675	0.22
Amusement	\$ 2,520	0.44
Total	<u>\$ 5,272,076</u>	

Ten year average from FY13 back to FY04

Reducing Retail from .39 to .35 will reduce receipts by:	\$ (75,000)
Eliminating Wholesale will reduce receipts by:	\$ (147,000)
Eliminating Manufacturing will reduce receipts by:	\$ (122,000)
Projected reduction in B&O Tax receipts:	<u>\$ (344,000)</u>

City of Farimont
Calculation of Estimated Sales and Use Tax
Home Rule Application

Illustration G

Exempt Service Sales:

Advertising
Entertainment facilities
Child Care
Electronic Data Processing
Health and Fitness Organizations
Music Instructional
Newspaper Circulation
Nursing Homes
Personal Services; hair, nails, massage
Prescriptions
Professional Services; Dr, Esq, Eng, CPA, Auctioneer, Architect
Real Property

Taxable Service Sales:

Cleaning
Exterminating
Car Wash
Insurance
Security Service
Auto Repair Service

Estimate 15% of Service Sales are taxable:

Total Service Sales: \$	209,099,143
Estimated Sales Tax: \$	314,000

Exempt Retail Sales:

Food
Motor Vehicles
Motor Fuel
Real Property

Estimate 50% of Retail Sales are taxable:

Total Retail Sales: \$	187,706,923
Estimated Sales Tax: \$	939,000

Total Sales Tax generated	\$	1,253,000
Less: 5% Tax Commission Admin fee	\$	(63,000)
Less: B&O offset needed	\$	(344,000)
Net available new projects	\$	846,000

Illustration H Feasibility Study

City of Fairmont, West Virginia Feasibility Analysis of Imposing Sales and Use Taxes

EXECUTIVE SUMMARY

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

- \$ 15.3 M to fund pension and other liabilities of the city
- \$ 6.5 M to fund needed infrastructure improvements

With the exception of the newly enacted Street Maintenance and Improvement Charge in 2011 which is dedicated to Street maintenance and paving; and the exception of B&O Tax paid on one-time construction projects which is dedicated to debt service and capital needs, 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	\$ 3,840,138	\$ 10,535,369
2012	\$ 3,984,440	\$ 10,731,979
2011	\$ 4,202,268	\$ 10,613,075
2010	\$ 3,964,202	\$ 10,002,340
2009	\$ 4,063,094	\$ 9,949,987

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 April 14, 1987, enabling legislation being Ordinance No. 742, as amended. The rates of tax are as allowed by W. Va. Code § 8-13-5 or are close to the maximum rates. 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.

Illustration H
Feasibility Study

Classification	Rate per \$100 Gross Receipts	
	Maximum Rate	City Rate
Production		
Coal	1%	1%
Sand & gravel (not mined or quarried)	3%	1%
Oil, blast furnace slag	3%	1%
Natural gas in excess of \$5,000	6%	3%
Limestone or sandstone quarried or mined	1.5%	1%
Timber	1.5%	1%
Other natural resource products	2%	1%
Manufacturing	0.3%	0.22%
Business of selling tangible property		
Retailers	0.5%	0.39%
Wholesalers	0.15%	0.15%
Public service or utility business		
Street & inter urban & electric railways	1%	0.2%
Water companies	4%	1%
Electric light and power companies (sales and demand charges, domestic purposes & commercial lighting)	4%	4%
Electric light and power companies (all other sales & demand charges)	3%	3%
Natural gas companies	3%	3%
Toll bridges	3%	3%
All other public service or utility business	2%	1%
Contracting	2%	2%
Amusements	0.5%	0.44%
Service business or calling	1%	0.70%
Rentals, royalties, fees or otherwise	1%	1%
Small loan and industrial loan businesses	1%	NA
Banking and other financial business	1%	1%
Certain health maintenance organizations	0.5%	0.5%
Business of aircraft repair & maintenance	0.1%	NA

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 § 8-13-5.

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.

Illustration H Feasibility Study

	2013 Levy Rate	Maximum Rate
Class II Property		
Regular levy rate	0.25%	0.25%
Excess levy rate	NA	0.125%
Bonded indebtedness	NA	NA
Class IV Property		
Regular levy rate	0.5%	0.5%
Excess levy rate	NA	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.

Solid Waste Collection charges established by Ordinance No. 463 on May 16, 1978, as amended, and Recycling charges established by Ordinance No. 925 on June 22, 1993, as amended.

Fire protection service charges established by Ordinance No. 636, on July 3, 1984, as amended.

Street Sweeping Disposal fee necessary to generate sufficient revenues to provide for the proper disposal of waste material generated by street sweeping; established by Ordinance No. 1419 on June 10, 2008, as amended.

Resident and Non-Resident Street Maintenance and Improvement charges necessary to generate revenues sufficient to provide the essential municipal service of street maintenance and improvement; established by Ordinance No. 1522 on May 11, 2011.

Illustration H Feasibility Study

B. Proposed Sales and Use Taxes

Sales and use 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 use tax is collected, with limited exceptions.

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.
5. Sales of real property and sales of intangible personal property, which are not subject to State sales tax.

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 likely charge an annual fee for his services, which may not exceed 5% of net collections per fiscal year. The City of Fairmont assumes that the fee will be 5% of net collections.

Illustration H

Feasibility Study

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.

We recognize that 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. Estimate of Sales and Use Tax Collections

The population of the municipality as of the 2010 census was more than 18,700 persons. The primary retail shopping areas for these residents are located within the municipality. Businesses within the municipality also draw shoppers from outside the municipality. Residents of the municipality may also shop outside the municipality.

During the most recent fiscal year of the City, gross receipts of more than \$210 M was reported under the retail classification of the municipality's business and occupation tax. During the most recent fiscal year of the City, gross receipts of more than \$194 M was reported under the service classification of the municipality's business and occupation tax. While gross receipts reported under the retail and service classifications of the business and occupation tax and gross proceeds of retail and service sales subject to the proposed sales and service tax will not be the same for many reasons, gross receipts reported under the retail and service classifications 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, (4) sales of prescription drugs, and (5) sales of certain services including but not limited to: sales of advertising, entertainment, child care, electronic data processing, health and fitness organizations, music instruction, newspaper circulation, nursing homes, personal services, professional services, and real property 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

Fiscal Year	Sales Tax Revenue	B & O Tax Reduction	Net Effect
2015	\$1,253,000	\$344,000	\$909,000
2016	\$1,259,000	\$346,000	\$913,000
2017	\$1,268,000	\$348,000	\$920,000
2018	\$1,270,000	\$349,000	\$921,000

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

Illustration H

Feasibility Study

amount of revenues generated annually by their respective sales and use taxes and whether actual revenue are exceeding initial expectations.

	2013	2012
Municipality	Taxable Gross Proceeds	Taxable Gross Proceeds
Huntington	\$6,822,345	\$3,696,264
Williamstown	\$	\$
Rupert*	\$	\$ n/a

*Rupert's tax was first collected beginning April 1, 2013

** Sales taxes imposed by Charleston, Harrisville and Wheeling were first collected beginning October 1, 2013. For this reason, they are omitted from this chart.

D. 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.

E. 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 those applicable to the location where the purchaser or the purchaser's designee takes delivery of the goods or results of the taxable service.

Applying the destination sourcing rules can be a new experience for vendors selling goods and services in a municipality that heretofore has not imposed sales and use taxes.

The destination sourcing rule for sales and use tax purposes will be different in some instances from the rules businesses commonly follow to determine their business and occupation tax liability.

Illustration H Feasibility Study

F. Boundary Database

We recognize that a municipality imposing a sales tax will need to provide the Tax Commissioner with a rate and boundary database. To build the database, the City anticipates utilizing the five-digit zip codes located in whole or in part in the municipality, and the nine-digit zip codes located in whole or in part within the municipality imposing the sales tax. Consequently once the rate and boundary database is built it must be maintained by the municipality and the Tax Commissioner must be advised when the zip code boundaries are changed.

The City of Fairmont has two 5-digit zip codes located in whole or in part within the City – 26554 and 26555.

G. 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 must 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.

H. 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 charts on pages 2 and 3 of this document indicate, the business and occupation rates imposed by the City of Fairmont 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 rate of business and occupation tax imposed on its retail classification and eliminate the rates of business and occupation tax imposed on its wholesale and manufacturing classifications.

Classification	Current Rate	Proposed Rate
[1] Retail	.39%	.35%
[2] Wholesale	.15%	.00%
[3] Manufacturing	.22%	.00%

These reductions are estimated to reduce the City's business and occupation tax collections by \$344,000 per year.

Illustration H
Feasibility Study

CONCLUSION

As the preceding discussion demonstrates, it is feasible for the City of Fairmont, West Virginia, to reduce its business and occupation taxes by \$344,000 per year and impose sales and use taxes at a rate of 1% that is expected to generate net revenue in excess of \$909,000 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 I. Rogers, III
City Manager

Fiscal Impact Worksheet

FISCAL IMPACT WORKSHEET FOR PROBLEM AND PROPOSED SOLUTION

Municipality: Fairmont, West Virginia

Person who prepared fiscal statement: Eileen Layman

Telephone number: 304-366-6211 ext 322

Email address: elayman@fairmontwv.gov

Problem Number: 2 and Solution 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.

Through the elimination of the manufacturing and wholesale classifications and reduction in the retail classification under the B&O Tax, the City projects a loss of approximately \$344,000 in revenue. With the implementation of a 1% sales and use tax, the City projects new net revenue in the amount of \$909,000. This new revenue will provide the City with funds to address unfunded liabilities in the City's pension plans and provide funding for additional priorities of the City such as the removal of vacant and blighted properties.

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.

Residents will pay an additional 1% sales tax on non-exempt retail and service purchases made in the corporate limits. However, the implementation of a sales and use tax has proven successful in other municipalities with little to no adverse impact on the residents. Businesses will see a benefit in this proposal through the elimination and reduction of the B&O Tax rates.

Fiscal Impact Worksheet

B. Fiscal Impact Detail – Municipality

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>\$5,000 +</u>	<u>Minimal</u>
a. Personal Services	<u>\$5,000</u>	<u>N/A</u>
b. Current Expenses	<u>Minimal</u>	<u>Minimal</u>
c. Repairs & Alterations	<u>N/A</u>	<u>N/A</u>
d. Assets	<u>N/A</u>	<u>N/A</u>
e. Other	<u>N/A</u>	<u>N/A</u>
2. Estimated Total Revenue Gain	<u>\$1,253,000</u>	<u>\$1,271,000</u>
3. Estimated Total Revenue Loss	<u>\$344,000</u>	<u>\$346,000</u>

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

The worksheets illustrating the projected gains and losses as a result of the
implementation of a 1% sales and use tax have been prepared and are found
in Tab F Section II Written Narrative Proposal 2. Imposition of Sales & Use Tax.

Fiscal Impact Worksheet

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?

Businesses in the retail and service classification will be impacted by the Sales & Use Tax along with our residents.

Businesses in the manufacturing, wholesale and retail classifications will be impacted by the elimination and reduction of B&O. The proposed solution will also impact existing and future pensioners.

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

Indications are that the 1% sales tax has little impact on residents. The elimination and reduction of B&O Taxes is a positive impact for current and new businesses in Fairmont. By dedicating a portion of the revenue from the sales tax to the pensions we expect to stabilize the plans by reducing our unfunded liabilities.

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

The City analyzed 10 years of B&O Tax receipts to estimate the loss and additional revenues derived from certain classifications.

Actuarial evaluations were used in the analysis of the City's pension plans.

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

The City does not anticipate any negative impacts at this time.

D. Additional Information

THE CITY OF FAIRMONT MUNICIPAL HOME RULE PLAN

SECTION II WRITTEN NARRATIVE

PROPOSAL 3. RELIEF FROM THE PROVISIONS OF WEST VIRGINIA CODE §8A-7-10(c) and (d) (Administration)

Specific state laws, policies, rules or regulations

WV State Planning Enabling Law §8A-7-10(c) and (d)

(c) Land, buildings, or structures in use when a zoning ordinance is enacted can continue the same use and such use cannot be prohibited by the zoning ordinance so long as the use of the land, buildings or structures is maintained, and no zoning ordinance may prohibit alterations or additions to or replacement of buildings or structures owned by any farm, industry or manufacture, or the use of land presently owned by an farm, industry or manufacture but not used for agricultural, industrial or manufacturing purposes, or the use or acquisition of additional land which may be required for the protection, continuing development or expansion of any agricultural, industrial or manufacturing operation of any present or future satellite agricultural, industrial or manufacturing use. A zoning ordinance may provide for the enlargement or extension of a nonconforming use, or the change from one nonconforming use to another.

(d) If a use of a property that does not conform to the zoning ordinance has ceased and the property has been vacant for one year, abandonment will be presumed unless the owner of the property can show that the property has not been abandoned: Provided, that neither the absence of natural resources extraction or harvesting nor the absence of any particular agricultural, industrial or manufacturing process may be construed as abandonment of the use. If the property is shown to be abandoned, then any future use of the land, buildings or structures must conform with the provisions of the zoning ordinance regulating the use where the land, buildings or structure are located, unless the property is a duly designated historic landmark, historic site or historic district.

Problem: Revitalization of the Beltline: In 2004, local stakeholders came together to plan for the revitalization of the City's Beltline Area. This unique neighborhood contains a number of assets and challenges that if properly planned could work in concert to create a premier community. At the time of the 2004 Redevelopment Plan, the Beltline was home to many modest homes, small retail shops, the East West Stadium and the 12th street pool complex, an historical WPA project. It was the planned location for Marion County's new West Fairmont Middle School. The area was also challenged with a number of old industrial buildings left abandoned after the decline of the coal industry boom.

The City along with Marion County Commission, Board of Education, Marion County Parks and Recreation, and many business owners formed a redevelopment collaborative to look at ways that

the assets within the neighborhood could be improved and the challenges of vacant and dilapidated brownfield sites could be mitigated.

The redevelopment group was somewhat successful in realizing some of the elements of the redevelopment plan through the renovation and reopening the 12th Street Pool, updating the stadium, and building the new middle school. In addition, the City identified this area as an excellent opportunity to construct a rails to trails path that would link the West Fork Trail to the east side of the City and created an engineered plan to complete the trail improving the walkability of the neighborhood and improving the health of its residents.

To further enhance and preserve many of the unique uses of the Beltline, the City rezoned the area to Neighborhood Mixed Use in 2006 following the completion of a year-long process to update its Comprehensive Plan. This zoning classification was designed to preserve the homes and other structures existing in the Beltline along with the small businesses, schools, and recreational amenities, to accommodate the change in uses and the character of the area, and to provide for similar compatible uses.

Elkins Iron and Metal and its predecessors maintained what appeared to be a scrap metal drop off point within the Beltline area for many years. Its original location, near the gateway to the Beltline from major thoroughfares and adjacent to the proposed rail trail path, was confined to an area of approximately .5304 of an acre and identified as Parcel 277 of Marion County Tax Map 01-03. (See Illustration A)

At or near the time of the rezoning, one of the principals of Elkins Iron and Metal acquired property adjacent to the existing site identified as Parcels 251 and 252 of Marion County Tax Map 01- 03. The owner demolished an historical structure, the Fairmont Brewing Company, which existed on Parcel 151. With the acquisition of Parcels 251 and 252, Elkins Iron and Metal controlled the real estate on both sides of the former railroad bed still owned by CSX, successor to Monongahela Industrial Railroad Company and which was/is planned for use as the rail trail link. (See Illustration B and Illustration C)

Following the demolition, City of Fairmont Code Enforcement observed that the recycling yard was expanding to the recently acquired lots as evidence by period photos. A code notice was issued as the site was not zoned for such expansions. The owner appealed the citation to the City of Fairmont Board of Zoning Appeals (BZA). During the BZA hearing, the owner relied heavily on the provisions of West Virginia Code §8A-7-10(c) as a defense to the code notice citing that the provisions of Code provided for the “*protection, continuing development or expansion of any agricultural, industrial or manufacturing operation*”. The BZA sustained the appeal and quashed the code notice. The City did not seek to appeal given that the decision of the BZA, in light of West Virginia Code §8A-7-10(c), did not appear arbitrary, capricious, an abuse of discretion, or contrary to fact or law.

Elkins Iron and Metal’s reliance on this provision has allowed them to expand their operations within a neighborhood, near small businesses and homes. The effects has been the demolition of an historic structure, devaluing of homes and property, and the hindrance of implementing past planning recommendations. Elkins Iron and Metal’s operations, which include an industrial

crusher, now occupy an area consisting of approximately 1.76 acres and occupying Parcels 277, 251, and 252 of Marion County Tax Map 01-03. In addition, the operations encroach on Parcel 276 of said tax map.

In spite of the City of Fairmont's best efforts, the resulting negative effect of the application of West Virginia Code §8A-7-10(c) to the expansion of Elkins Iron and Metal in the Beltline Redevelopment Area is readily apparent from current aerial photographs.

Elkins Iron and Metal has now purchased additional property, being Parcel 270, of Marion County Tax Map 01-03, comprised of approximately .4 acre, across the street from their facility and adjacent to a local and highly used gym. Another building has been demolished. The City has no ability to stop this satellite industrial expansion. Notwithstanding the efforts of the City, to transform the area consistent with current uses, the provisions of West Virginia Code 8A-7-10(c) have proven to be inimical to the public health and safety of the City and her citizens. (See **Illustration D**)

The total area affected by Elkins Iron and Metal's operations has increased from the original .5304 of an acre to 2.4 acres.

Sections §8A-7-10(c) and (d) undermine a local jurisdiction's ability to protect the public health, morals, and welfare through land use regulation, and the code section also undermines the comprehensive planning process that city's with zoning and land use codes are statutorily required to undertake. These provisions essentially allow any industry, manufacturing facility, or agricultural use to expand or open satellite businesses anywhere within the City without regard to local regulations or the detrimental effects on neighboring properties and the community as a whole.

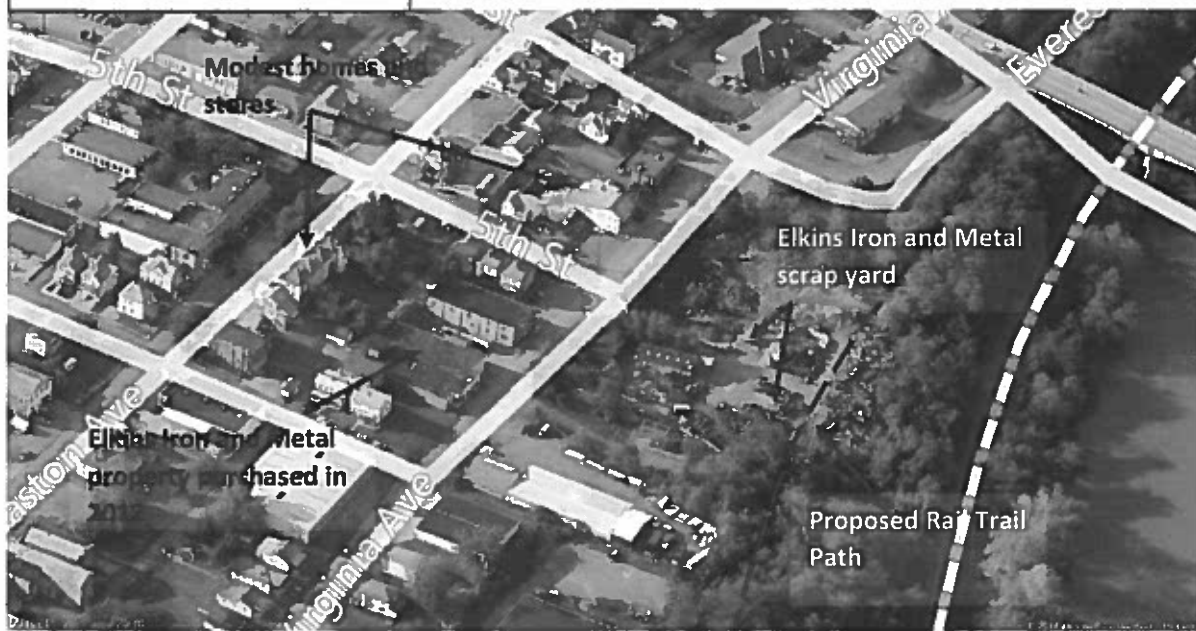
Solution: The City of Fairmont, via its Home Rule Plan, desires to eliminate the inevitable negative consequences of an application of the provisions of Sections §8A-7-10(c) and (d) of the West Virginia Code in its corporate limits, and to provide that such uses are defined as non-conforming uses under the City of Fairmont current Planning and Zoning Code. Without a loss of any vested rights, this would require that such uses must follow a prescribed process in order to expand or relocate. Classifying these as non-conforming uses, if they are in fact within an area designated contrary to the use proposed, would allow equal protection to occur to non-industrial, manufacturing, or agricultural uses. It would also allow local regulations, which are designed to protect adjacent neighbors and the public health, safety and welfare, to be enforced.

The City has areas zoned for Industrial which would permit industrial and manufacturing type of uses so these uses are not excluded from our community but are permitted where the carrying capacity of the land, utilities and the road network exist to support such uses. These areas are also zoned so as to mitigate negative impacts to adjacent properties. If existing industrial, manufacturing, or agricultural uses are present within an area not properly zoned, they are still afforded protection as a non-conforming use under the City's current Planning and Zoning Code. The same protections would be afforded such non-conforming uses within the confines of this proposed Home Rule Ordinance.

The City's current Planning and Zoning Code provides that non-conforming uses are permitted to continue until abandonment has occurred which is 1 year after the business has ceased to exist. A non-conforming use can also change to another similar use or a less intense non-conforming use subject to Board of Zoning Appeals approval. Non-conforming uses can also expand within an existing facility if approved by the Board of Zoning Appeals.

ILLUSTRATION A

Elkins Iron and Metal 2012



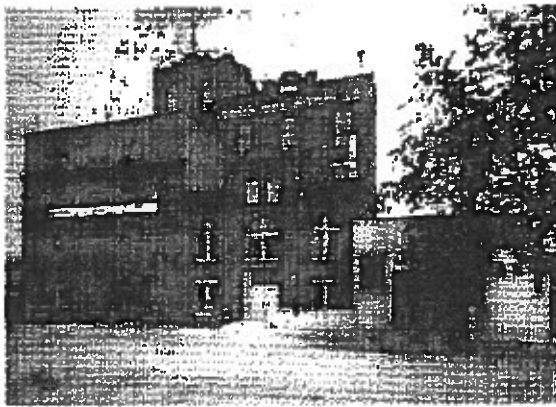
Elkins Iron and Metal 2003



27

Fairmont Brewing Company

The Fairmont Brewing Company building was built circa 1900, and became an integral part of the industrial growth of the South Side. Metal brewery tokens were given to glass workers in the neighboring shops, entitling them to a free beer during mid-day breaks. The Viglianco family (see site 33) bought the brewery in the early part of the century and operated it as North Pole Brewing until it closed because of the Volstead Act. Following Prohibition, they returned to open Black Diamond Ice on the brewery premises.



*Virginia Ave. at the
foot of 5th St.*

During World War II, the U.S. Government requisitioned the brewery equipment for the manufacture of war materials and tore out several doorways and windows in the process of removing the equipment.

Fairmont Brewing Company is a complex cluster of attached, flat-roofed brick and masonry buildings.

The most visible and important element is the main brewery building, an example of "Pennsylvania brewery" style architecture in its shape, massing, and Romanesque windows and brickwork. An elaborate central stepped pediment with a cartouche bearing the inscription "1900" rises from a pair of pilasters on the high facade which sits back from the street. The brewery has undergone numerous modifications, some when the building still functioned as a brewery. One addition was built in the early 1920s with timbers previously used for the concrete forms on the High Level Bridge construction. A separate garage, built in the late 1920s, was used for warehousing and was later occupied by Kisner Lumber and Sheet Metal. More recent changes have dramatically altered the appearance of what is still a historically significant structure.

This building is unusual for the state of West Virginia, where a Romanesque-style brewery, common to Pennsylvania, is rarely seen in this state. Fairmont is on the geographical periphery of this style of brewery architecture, which can also be seen at the Reymann and Schmulbach breweries in Wheeling.

ILLUSTRATION C

Photos of Elkins Iron and Metal



ILLUSTRATION D

Elkins Iron and Metal Property Ownership Time Line



Fiscal Impact Worksheet

FISCAL IMPACT WORKSHEET FOR PROBLEM AND PROPOSED SOLUTION

Municipality: Fairmont, West Virginia

Person who prepared fiscal statement: Eileen Layman

Telephone number: 304-366-6211 ext 322

Email address: elayman@fairmontwv.gov

Problem Number: 3 and Solution 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 proposal for relief from the provisions of WV State Code 8A-7-10(c) and (d) will have a positive fiscal impact on the revenues of the City by an increase in property values and associated ad valorem tax by limiting or relocating non-conforming and/or noxious uses within and near residential areas.

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.

The proposal will have a positive impact on residents or persons doing business inside the City as it will allow enforcement of local zoning codes which are designed to provide for proper development and redevelopment of areas that is in the best interest of the public health, safety, and welfare. Any perceived negative affect on industrial or manufacturing uses will be negligible since they will be protected as a non-conforming use.

Fiscal Impact Worksheet

B. Fiscal Impact Detail – Municipality

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	N/A	N/A
a. Personal Services		
b. Current Expenses		
c. Repairs & Alterations		
d. Assets		
e. Other		
2. Estimated Total Revenue Gain	N/A	N/A
3. Estimated Total Revenue Loss	N/A	N/A

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

N/A

Fiscal Impact Worksheet

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?

Citizens, residents, business owners, and visitors will be positively affected by the proposed Ordinance.

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

All groups will benefit from a community that is permitted to properly plan and zone according to the goals and objectives of the City and its leadership. Existing industrial and manufacturing uses will not be negatively impacted as they will be protected similar to other commercial businesses under the non-conforming use provisions of the Planning and Zoning Code.

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

Nearby States permit their municipalities to regulate land use without limitation after they have completed and relied on a Comprehensive Plan for their community. Ohio and Michigan are examples of States which provide for the regulation of land use.

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

Existing industrial, manufacturing, and agricultural uses will receive equal protection as a non-conforming use and be permitted to continue operation and expand their business subject to proper notification and deliberation of their proposals.

D. Additional Information

THE CITY OF FAIRMONT MUNICIPAL HOME RULE PLAN

SECTION II WRITTEN NARRATIVE

PROPOSAL 4. DISPOSITION OF CITY REAL PROPERTY (Administration)

Specific state laws, policies, rules or regulations

West Virginia Code §8-12-18(b)

Problem: Most of the City of Fairmont's existing neighborhoods were laid out and developed prior to the City of Fairmont's subdivision regulations and contain non-conforming and substandard lots, fragments of lots, and parts of lots, some of which have been subject to further subdivision over the years. Due to the obsolescence of these properties and their challenge for redevelopment many of these substandard lots have been abandoned and contain blighted, vacant and dilapidated structures.

Like many other communities in West Virginia and nationally, blighted structures plague the City of Fairmont. Vacant and blighted properties have negative and deleterious effects on cities including:

- Causing the diminishing value of otherwise stable neighborhoods by deterring other homeowners from investing in their properties causing further decline within communities.
- Out of State property owners are difficult to find and prosecute for code violations.
- Vacant and dilapidated properties are attractive nuisances for criminal activity and arson. The direct costs to combat these nuisances are borne by the entire taxpaying community.
- The cost to cities to remove these structures far outweighs their market value so it is unlikely that cities will recover those costs.

Locally adopted property maintenance codes and certified code enforcement officers can curtail some of these negative effects, and the City of Fairmont has adopted and fully enforces these regulations. The City has also undertaken steps necessary to provide for the adoption of a Vacant Property Registration Ordinance, as permitted by Chapter 8 of the West Virginia Code, so that properties which are vacant can be located and inspected in hopes that they will not become dilapidated.

The City's ability to remove blighted structures is limited. Although there is heavy reliance on the legal system to force property owners to take down unsafe buildings, many of these structures remain as a result of out of state property ownership or the inability of the owner to pay for private demolition. This has left the burden of demolition to the City and its limited funding. On average, a dilapidated home will cost the City \$18,000 to demolish while the value of the now vacant site

is less than \$5,000 leaving no chance for the City to recoup their expenditures. Outside funding for demolition is also very limited.

The City of Fairmont, in conjunction with partners such as the West Virginia Housing Development Fund and the Fairmont Community Development Partnership, has undertaken to remove and provide for the removal of blight and dilapidated structures in the City, through a series of efforts, including acquisition and demolition by the City in some instances but more is needed. (See Illustration A)

The City is desirous of continuing to acquire challenging properties, clear them of blight, and correct their obsolescence through a side lot program which would convey them to adjacent homeowners. The City's side lot program will return once unproductive and blighted properties to the tax rolls, enlarge adjacent substandard lots and in most cases eliminate fragments of lots

The City's inability to convey real property with a value over \$1,000 without notice and public auction hinders this program. An example of the challenges posed by West Virginia Code §8-12-18(b) is the subdivision and sale of a small piece of the Morgantown Avenue Mini Park. The City desired to convey a small unused portion of this property to an adjacent homeowner so that correction to stormwater runoff issues could be made. Since the property appraised for more than \$1,000 a public auction was held. No one bid on the property at the auction due to its reserve value, which was necessary to recover the cost of the appraisal, the cost of survey to create the subdivision plat, and the cost of legal advertisements, the cost of conducting the action, as well as staff time involved. Following the failed auction, the City conveyed the property at a value acceptable to the property owner and the City. (See Illustration B)

The notice and public auction requirements of West Virginia Code §8-12-18(b) stand as an impediment to the City's ability to maintain its side lot program and to dispose of substandard lots and fragments of lots inasmuch as the value of any one of such lots may be in excess of \$1,000, but the value does not exceed the cost of sale.

Solution: The City is proposing to remedy this problem by increasing the threshold at which a public auction of real property is required from \$1,000 to \$15,000.00. Adequate public notice of the sale or conveyance of any such lot will continue to be provided via West Virginia Code §8-11-3(6) and 2.12(6) of the City Charter, which require that any sale or conveyance of City owned real estate must be authorized by Council by ordinance.

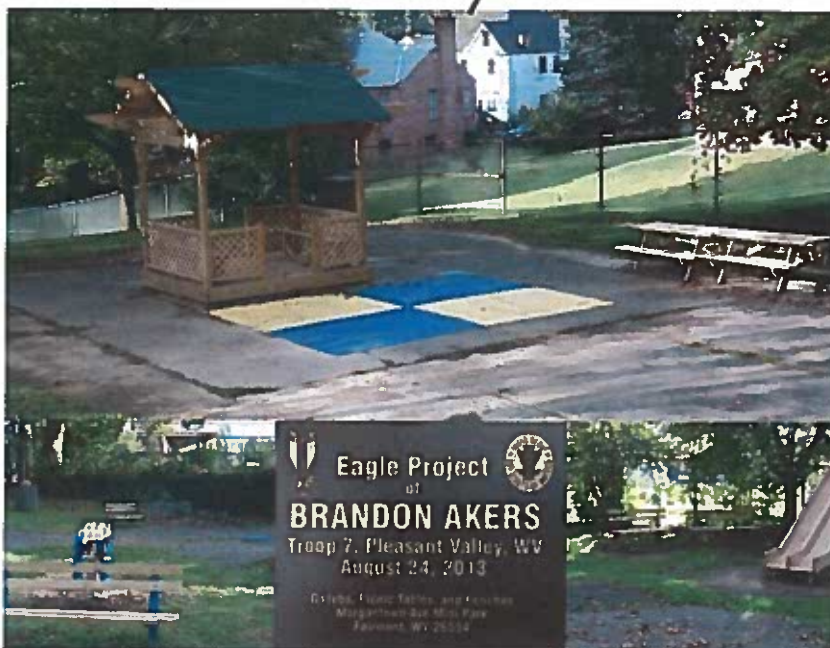
ILLUSTRATION A

Dilapidated homes on Sub Standard Lots



ILLUSTRATION B

Morgantown Avenue Mini Park



Fiscal Impact Worksheet

FISCAL IMPACT WORKSHEET FOR PROBLEM AND PROPOSED SOLUTION

Municipality: Fairmont, West Virginia

Person who prepared fiscal statement: Eileen Layman

Telephone number: 304-366-6211 ext 322

Email address: elayman@fairmontwv.gov

Problem Number: 4 and Solution 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.

The proposal to increase the value at which City owned property must be auctioned will have a significant and positive impact to our residents and businesses by allowing a more efficient and affective procedure to remove blighted structures and put cleared properties by into productive use through a side-lot program. Ad valorem tax revenues will increase as properties are cleared of blight and joined with other properties to provide for enhanced lot size. Tax revenues will also increase as surrounding property values increase due to blight removal.

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.

Residents and persons doing business in the City will have see a postive impact to the community through the removal of vacant and dilapidated structures and the productive re-use of those properties.

Fiscal Impact Worksheet

B. Fiscal Impact Detail – Municipality

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	N/A	N/A
a. Personal Services		
b. Current Expenses		
c. Repairs & Alterations		
d. Assets		
e. Other		
2. Estimated Total Revenue Gain	N/A	N/A
3. Estimated Total Revenue Loss	N/A	N/A

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

N/A

Fiscal Impact Worksheet

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?

Citizens, residents, and business owners.

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

Postive impacts for all groups will be realized as neighborhoods are cleared of sub-standard and blighted properties. Businesses will be positively impacted by new residents moving into a revitalized City.

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

There is a wealth of evidence based data emanating from progressive States such as Ohio, Michigan, and Pennsylvania regarding the positive impacts of tools that help to mitigate vacant and dilapidated properties. One tool in particular, side lot programs typically ran by Land Banks, has been very effective in communities including Cuyahoga County, OH and Flint, MI

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

There are not perceived negative impacts.

D. Additional Information

AFFIDAVIT OF MUNICIPAL CLERK
PUBLIC HEARING MANDATE VERIFICATION

STATE OF WEST VIRGINIA
COUNTY OF MARION, TO WIT:

This day personally appeared before the undersigned Notary Public in and for the County and State aforesaid, Janet Keller, who, being first duly sworn, upon her oath, deposes and says:

1. That she is the Clerk for the City of Fairmont and that as such she has personal knowledge of the facts set forth in this affidavit;

2. That on March 25, 2014 at 5:30 p.m., in Council Chambers, the Council for the City of Fairmont, at a special meeting duly called for such purpose, held a public hearing on the City of Fairmont's Home Rule Plan pursuant to the provisions of West Virginia Code §8-1-5a(g);

3. That prior thereto, she caused a notice of said public hearing to be published as a Class II legal advertisement in the Times West Virginian, a newspaper in general circulation in the City Fairmont and Marion County West Virginia, with dates of publication being February 24, 2014, and March 3, 2014 (Exhibit i);

4. That since February 24, 2014, a copy of the City of Fairmont Home Rule Plan has been available for public inspection at her office in Room No. 312, City County Complex, 200 Jackson Street, Fairmont, West Virginia;

5. That prior to the special meeting, she prepared an agenda for the special meeting and provided a copy of the Agenda (Exhibit ii) and Special Meeting Notice, (Exhibit iii), to all local media outlets on March 19, 2014 in accordance with Council's Rules of Order and the provisions of West Virginia Code §6-9A-1, the Open Government Proceedings Act;

6. That the March 25, 2014, special meeting of the Council for the City of Fairmont was called pursuant to Rule 1.4 of Council's Rules of Order, and all provisions of said Rule have

been satisfied; and

7. That a certified copy of the minutes of the March 25, 2014 public hearing on the City of Fairmont's Home Rule (Exhibit iv) are attached.

And further affiant sayeth naught.

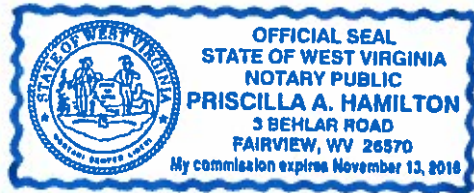
Janet L. Keller
AFFIANT

Taken, subscribed and sworn to before me, the undersigned authority, this the 28th day of May, 2014.

Priscilla A. Hamilton
NOTARY PUBLIC

My Commission Expires:

November 13, 2016



NOTICE OF PUBLIC HEARING
ON PROPOSED HOME RULE PLAN
OF THE CITY OF FAIRMONT, WEST VIRGINIA

The West Virginia Legislature in 2013 expanded the Municipal Home Rule Pilot Program created pursuant to the provisions of West Virginia Code §8-1-5a to allow participation by additional municipalities. The City of Fairmont desires to participate in the expanded Municipal Home Rule Pilot Program and has prepared a written home rule plan.

West Virginia Code §8-1-5a(g) requires that the City of Fairmont hold a public hearing on the written home rule plan prior to submitting the written home rule plan to the Municipal Home Rule Board.

NOW, THEREFORE, PLEASE TAKE NOTICE THAT THE COUNCIL FOR THE CITY OF FAIRMONT WILL HOLD A PUBLIC HEARING ON THE CITY OF FAIRMONT'S PROPOSED WRITTEN HOME RULE PLAN ON THE 25TH DAY OF MARCH, 2014, AT 5:30 P.M., WHICH PUBLIC HEARING SHALL BE HELD IN COUNCIL CHAMBERS, AT THE CITY OF FAIRMONT PUBLIC SAFETY BUILDING, 500 QUINCY STREET, FAIRMONT, MARION COUNTY, WEST VIRGINIA.

A copy of the City of Fairmont's proposed written home rule plan is available for public inspection at the Office of the Clerk of the City of Fairmont, Room No. 312, Third Floor, City-County Complex, 200 Jackson Street, Fairmont, Marion County, West Virginia.

At the public hearing anyone interested in the matter may appear and be heard.

Dated at Fairmont, West Virginia this the 14th day of February, 2014.

JANET L. KELLER
CITY CLERK OF THE CITY OF FAIRMONT

Publish as a Class II Legal Ad on February 24, 2014 and March 3, 2014.

Exhibit i

FAIRMONT CITY COUNCIL
SPECIAL MEETING
TUESDAY, MARCH 25, 2014
5:30 P.M.
COUNCIL CHAMBERS
PUBLIC SAFETY BUILDING
500 QUINCY STREET
FAIRMONT, WEST VIRGINIA

A G E N D A

- I. CALL TO ORDER – Ronald J. Straight, Sr., Mayor
- II. ROLL CALL OF MEMBERS – Janet L. Keller, City Clerk
- III. CONSIDERATION OF COUNCIL BUSINESS
 - 1. Public Hearing on Proposed Written Home Rule Plan.
- IV. ADJOURNMENT

Exhibit ii

NOTICE
SPECIAL MEETING
OF THE
COUNCIL OF THE CITY OF FAIRMONT

PLEASE TAKE NOTICE that the undersigned will convene a Special Meeting of the Council of the City of Fairmont on Tuesday, March 25, 2014, at 5:30 p.m., in Council Chambers, Public Safety Building, 500 Quincy Street, Fairmont, West Virginia for the purpose of the following:

1. Conduct Public Hearing on the City of Fairmont's Proposed Written Home Rule Plan.

Given under my hand this the 18th day of March, 2014.

Ronald J. Straight, Sr.
MAYOR

Exhibit iii

CERTIFICATION

STATE OF WEST VIRGINIA
COUNTY OF MARION
CITY OF FAIRMONT, TO WIT:

I, Janet L. Keller, Clerk of the City of Fairmont, West Virginia, keeper of the official records of said City, do hereby certify that the attached is a true copy of **Minutes from the Special Meeting of the Fairmont City Council held on March 25, 2014 regarding the Written Home Rule Plan.**

Given under my hand and seal this the 28th day of May, 2014.




CITY CLERK

Exhibit iv

March 25, 2014

A Special Meeting of the City Council of the City of Fairmont was held at 5:30 p.m. on the 25th day of March, 2014, at the Public Safety Building located at 500 Quincy Street, Fairmont, West Virginia.

Mayor Straight called the meeting to order.

Roll call was taken by the Clerk.

Councilmembers present were:

First District	Robert D. (Bob) Gribben
Second District	Travis L. Blosser
Third District	Deborah D. (Debbie) Seifrit
Fourth District	William H. (Bill) Burdick
Fifth District	Charles E. (Chuck) Warner
Sixth District	Daniel K. (Dan) Weber
Eighth District	Robin W. Smith
Ninth District	Ronald J. (Ron) Straight, Sr.

Absent:

Seventh District	Robert Garcia
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Also present were:

City Manager	Jay Rogers
City Clerk	Janet L. Keller
City Attorney	Kevin V. Sansalone
Finance Director	Eileen Layman
City Planner	Kathy Wyrosdick
Attorney	Brian Helmick, with Spilman, Thomas & Battle

CONSIDERATION OF COUNCIL BUSINESS

IN RE: PUBLIC HEARING ON PROPOSED WRITTEN HOME RULE PLAN

Pursuant to a notice duly published in the Times-West Virginian, on February 24, 2014 and March 3, 2014, Mayor Straight convened a public hearing to obtain citizen input on the City of Fairmont's proposed written Home Rule Plan.

Mayor Straight asked if anyone present wished to speak in favor of the proposed written Home Rule Plan.

Mr. Rogers, City Manager, stated that other members of staff are here this evening along with Brian Helmick with Spilman, Thomas and Battle that has help us as we have worked through this Home Rule Plan. He stated that the City of Fairmont, for the past year and half, has been working through the process that was established with the WV Legislature of creating a second pilot program to allow additional cities into the Home Rule Pilot Program. He added that those additional cities total a number of 20 and the four (4) Charter cities would have the ability to re-opt into the program and then up to 16 new cities which could be of any Class size in WV. He went on to say that we were fortunate that the WV Legislature saw fit to expand the program, extending it from 2013 to 2019 and we have worked well as a staff and working with Council through two work sessions to discuss some of the areas that we want to try to look at in Home Rule. Mr. Rogers said that one of the things that our Home Rule plan shows is that as a municipality, we are trying to take advantage of the entire scope of Home Rule by just not touching on one particular subject and actually looking at several things by addressing matters that have been of great concern or importance to us over the years and really deal with issues where we felt, as a staff and as a Council, that we have little flexibility given to us under the current State Code. The Manager went on to say that under the written plan that we have prepared, you essentially have four proposals or four areas of interest that we have put forth.

Mr. Rogers explained that the first one really speaks towards the business development program in Fairmont by requesting permission to expand the B&O Tax credits that are available in WV. He said that we have found ourselves in a situation where we have been encumbered by the current statute that allows credits to only the issue to new or expanding businesses and we have put forth a proposal that would actually allow us to implement three (3) additional tax credits for Business & Occupation Tax.

Mr. Rogers said the first one will be for an individual that would re-occupy a vacant or dilapidated structure. He noted that this is a great concern to us and many municipalities around the State of WV besides some of the means and methods of dealing with those vacant properties either through rehab or demolition, we believe that offering the B&O Tax credit to an individual who would come in and take a property that was vacant and return that property to productive use so perhaps a tax credit should be available to that individual.

The City Manager stated that we have taken a look that while the current statute talks about new and expanding businesses, quite often when we work with the ideas of incentives or tax credits for new and expanding businesses, we hear from our existing businesses of "what is available for us". He said that we came up with the idea of creating a B&O Tax credit that was based on the longevity of a business of being in Fairmont. He went on to say that would allow a business, for instance, that had been in Fairmont operating and complying with having a license and being current on all of their other fees to the City of Fairmont for 25 years, for example, they would receive in that year that they celebrated their 25th anniversary, a 25% credit towards their B&O Tax. He noted that there were certain milestones that are set forth in each of those.

Mr. Rogers said the third item that we are looking for as part of the B&O Tax credit would be for the rehabilitation or preservation of a contributing building in the downtown Historic District. He mentioned that we are starting to see quite a bit activity in the downtown with the State Office Building, with Pierpont Community & Technical College's move to downtown and the ability to have some individuals that would come in and do some things with the historic buildings that we have in downtown and be able to couple tax credit on a local level for the B&O Tax with the State's Historic Tax credit in the Federal Historic Tax credit, this will really add up to become quite an incentive for people.

The City Manager said the second item that we are proposing is the imposition or the implementation of a sales tax. He said that this is a measure that recently went through with the WV Legislature and was debated quite a bit about that implementation. He went on to say that previous law or current law would require that a municipality that had B&O Tax that they would actually repeal that B&O Tax and implement a sales tax; however, under the Home Rule Pilot Program, you are permitted to reduce or eliminate a category and then implement a sales tax. He said that as we discussed in the work session, the big thing that we see that we are able to do with the sales tax is actually introduce some revenue that would allow us to address our long-term liability on the pensions, particularly our Fire Pension Funds that we are continuing to struggle with. He said that with the reduction in B&O, we are proposing the reductions in the categories of Retail and proposing the elimination in the category of Wholesale and Manufacturing. He explained that we are actually going out and proposing about a total of \$344,000 a year of reductions in B&O Taxes and hopefully that reducing some of the burden that is shown on some of our businesses to operate.

Mr. Rogers said our third item that we have proposed as part of the written plan is relief from provisions of §8A-7-10 (c) and (d) which translates to the Zoning Code in the WV Code. He stated that one of the issues is our inability to regulate land uses in the local level when they apply to non-conforming uses that are either Industrial or Manufacture or Agricultural. He said that this area that we are treading into does not speak towards not allowing these businesses to be here but under the current WV Code there is no local control over where those businesses can locate and we believe that is something clearly that the community needs to decide through its Comprehensive Plan process and through the Planning Commission and then be able to regulate those non-conforming uses perhaps through a conditional use that has been properly bedded through the community versus having the State of WV decide that something of an obnoxious nature of an Industrial and Manufacturing base should be allowed (not audible) . . . particularly as we have seen and illustrated to you in the written plan and in the work session. He said that we have some of these occurring on fringes and basically in residential areas where this has happened. He noted that it has an adverse effect on property values, has an adverse effect on people wanting to move and continue to expand or to grow a business or residence in that neighborhood. He said that it really speaks to the matter of what Home Rule is about is that those decisions like that should be made on a local level.

The City Manager said that the final item is trying to address the vacant and dilapidated properties and we are seeking permission to increase the value of up to \$15,000 of property that the City could dispose of without a public auction. He said that a couple examples that have come before you were when we have had parcels of property that were declared to be surplus for the City of Fairmont. He said that one in particular was on Morgantown Avenue where we went through the process of having a public auction, no one bid on the property at the public auction, and we ended up coming back and having an appraisal done and it appraised underneath of the current statutory requirement of \$1,000 that exist now and the individual was able to purchase that. He went on to say that we went through about a year to a year and half process and incurred legal expenses and the individual incurred legal expenses and this would allow us to expedite those types of issues but also as we deal with the vacant and dilapidated properties, areas that we get into where we have non-conforming lots and we have parcels where we have been able to go in and acquire the property and demolish the structure and we can create come sidewalk programs perhaps where parties such as the Partnership have constructed a home and we have a vacant lot beside it that is sub-standard where you can create some sidewalk programs and give those individuals a larger parcel of property that they can operate on.

Mr. Rogers said that those are the four (4) items that we have proposed. He took a few minutes to thank the City Attorney, Finance Director, and City Planner for all of their hard work on the plan. He noted that he liked the idea that they tried to address multiple areas and have tried to address items that have been before us and creating a better business climate in the City and dealing with vacant and dilapidated properties and putting measures in place of how to deal with those in the future as well.

Mr. Rogers introduced Brian Helmick of Spilman, Thomas and Battle, who is knowledgeable in the area of sales tax.

Mr. Helmick stated that this is a great program that they have tried to support and encourage municipalities throughout WV to participate in and he was very pleased that Fairmont chose to do so and is choosing to do so and asked him for some assistance. He said that they did not expect to be a competitive nature of this process and a total of 20 applicants for the Home Rule. He stated that what they are starting to see around the State is that they may well get to the 20 number and it speaks well from his position in having looked at a number of applications in the past and working with other municipalities as well as through this process. He said that Mr. Rogers and his staff has put together something that Council will be very proud of and this is one of the strongest applications that he has ever seen put together for this round, the second round of the Home Rule program. He said that it is a very strong one and very unique and there will be other municipalities that will be proposing a sales tax of some sort in nature as well as perhaps some of the other aspects related to the selling of real estate at certain levels. He said the aspect of how you are using the sale tax revenues that would be generated, the offsets with the B&O Tax in order to do that, and especially with the B&O Tax credit is something that is very unique that he has not seen discussed amongst other municipalities around the State but it is something that really creates a unique application, one that is very strong and very detailed. He went on to say that the quality of applications that the Home Rule Board will see this year are going to vary greatly and he thought the City of Fairmont application from a quality standpoint, the depth that is in there, the thought that has gone into it, will be one of the very top applications that will be submitted this time. Mr. Helmick said that the combination of the B&O Tax with the credits, the reductions that are proposed, in addition to the sale tax is a unique one that is being proposed and he has not seen anybody else in the State talk about but from the sales tax proposal, we have seen other municipalities in WV implement a sales tax in the last year and half or two years and three of those did that under the Municipal Home Rule program, being the City of Huntington, the City of Charleston, and the City of Wheeling and they have had great

success in doing so. He then stated that it is something that will come around at some point, we are almost there this year, for all municipalities to take advantage of that opportunity without having to go through Home Rule. He said until the Legislature chooses to give you that authority directly to all municipalities, Home Rule is the only option unless you choose to do away with your B&O Tax or there is also the option that you can do a sales tax but it has to be dedicated solely to your pension liabilities. He mentioned that the proposal you have has been developed to be very unique and not in just proposing the sales tax but in proposing the use of those revenues to be used in a portion of which to take care of liabilities and the pension funds but mainly to allow you to be able to close one fund and move into another which will be a long-term benefit to the City of Fairmont but without having that revenue source is something that you can't have that option, most cities can't, he has yet to see one, that had the option to go into the other pension plan. Mr. Helmick went on to say that it does "takes the handcuffs off" and allows you to do some things that current code does not allow you to do but obviously you can see from the plan it will be a great benefit going forward. He explained that sales tax proposals around the State have been at one-half cent but while you take advantage of the opportunity, the Legislature did pass, unfortunately, passed a legislative rule with the State Tax Department as well that does allow the State Tax Department to take up to 5% of sales taxes that will be collected within the City of Fairmont as an administrative charge. He noted that it was supposed to be the actual administrative charge up to 5% and in our Home Rule presentations earlier this year, we said that anyway you run the numbers, you will end up at 5%. He said that it is one that you will impose and you will get to control what the rates are and you get to control what the uses will be under the Home Rule plan, if approved, but the administration will be done by the State Tax Department. He added that they will do the collections and remit the money back to you and then they will get their 5% in doing so. He mentioned that all of the rules that apply to sales tax now in WV will apply to the same that you would have under municipal Home Rule. Mr. Helmick said that it doesn't vary and is something that the Tax Department will take the lead on and educate any of the retailers locally that will need to know how to collect that. He added that there may be some benefit of not having been through the first go around on these sales taxes through the Municipal Home Rule program; it has been a work in progress in the City of Charleston. He stated that they did help with the collection process and in making sure that people understood exactly where they worked, if they were in the city or not, and whether or not whether they were supposed to be collecting it as a sales tax or a use tax in certain circumstances. He noted that the State Tax Department has a pretty good handle on how to do it at the municipal level. Mr. Helmick then complimented the City of Fairmont and

the staff for the tremendous application that they put together and he thought it would be received very favorably by the Home Rule Board and it is unique and it does take some thinking to take it in a different direction and shows some thinking outside of the box. He said that Fairmont took some of those thoughts and bring them into that box through Home Rule. Mr. Helmick then said that there is an advantage in some things that you will see the Legislators and other cities take note of and wished they had followed your lead in Home Rule or champion with the Legislature to give all municipalities the ability to do some of the things that you are doing especially with the sales tax proposal with the use of those proceeds that would be anticipated.

Councilmember Burdick asked Mr. Helmick if his firm was representing any other cities.

Mr. Helmick responded by saying that they have been engaged by three other municipalities, small municipalities in WV but not to the detail that they did with Fairmont but just simply to review their applications for compliance with State law. He noted that there was a requirement in the Home Rule program that requires that, in essence, there are some primitive acts in the Home Rule legislation that you can't do so we did do a review of three other cities applications for compliance with State law.

Councilmember Weber asked if we were talking about the entire application or are we just talking about the sales tax.

Mayor Straight replied the entire application.

Councilmember Weber said that his question basically has to do with verbiage and what words we are going to use. He said, for example, on page 8, we have the words "re-occupancy, vacant and dilapidated structures" and on page 22, we have "blighted and dilapidated structures". He said blighted and vacant have two different definitions so he suggested to use the same words all the way through rather than changing the words. He noted that blighted means something different than vacant. He said that he was not sure he liked either one of those terms and everyone knows how he feels. He then said that we should have consistency in words.

Kevin Sansalone, City Attorney, said that it was the effort to remove the word blighted and there may have been a couple places that it remained in the document but it should be dilapidated and vacant. He went on to say that initially when we contemplated the re-occupancy of vacant or dilapidated structures, they are going to be ones that are vacant for a period of time for

no more than a year. He added that part of the process is contemplated that the City will enact a Vacant and Dilapidated Structures Ordinance that will require registration of vacant buildings for purposes of Police and Fire and the use of City resources and that anyone who would qualify for the credit would have to be on that list so it wouldn't be something that could be vacant for a week or vacant for a month but vacant for the length of time that would require a registration under the ordinance. He stated that the ordinance that we are suggesting does not have a fee and is not a revenue raising measure or a fee situation.

Councilmember Weber asked if it was a registration and not a fee.

Mr. Rogers replied that was correct.

Councilmember Weber asked if all of the lawyers in the room could help with this problem. He said that we are having problems with the 4th and 14th Amendment already in this country and he wonders that in regards to registering something that is vacant and it remains vacant for a year simply because maybe the owner can't rent it or whatever. He then said that he cannot see the reasoning for registering a piece of property under the 4th and 14th Amendments in regard to the fact that you have in the 4th Amendment the right to have property.

Mr. Sansalone said the registration does not involve any kind of suspect class and did not think it was a question of one of the things that would be entitled to strict scrutiny and so what would happen would be if there was any rational basis for the registration and the Court would uphold the ordinance and there is clearing a rational basis for registration. He noted that you have to look at the expenditure of public funds, Police and Fire expenditures, Utility expenditures, and all of those things that relate to vacant structures are greater than occupied structures. He then said that vacant structures create a drain on all of those natural resources so there is clearly a nexus between the vacancy and the registration and since it's not one of the classifications that is entitled to strict scrutiny all you would have to do would be to have any rational basis which clearly there is.

Councilmember Weber said that to him that boils down to a search and it's without why are you searching a piece of property. He noted that the 4th Amendment says "unreasonable searches" and he finds that to be an unreasonable search.

Mr. Sansalone said that there was no element of search in the ordinance or

within the legislation that enables the . . .

Councilmember Weber said then why have an ordinance to that effect.

Mr. Sansalone said at least the Police and Fire would know which properties were vacant and the City would know which properties are vacant for purposes of the re-occupancy credit. He added that if someone comes along and purchases the vacant structure and comes in and says that they want this tax credit because they have re-occupied it, then they would be entitled, there is some mechanism by which to measure the credit.

Councilmember Weber said that you can do that now. He said that you have the ways now, you can look at the Water bills.

The Mayor interrupted Councilmember Weber and asked if he was speaking in favor or against.

Councilmember Weber said that he was just asking a question.

Mr. Sansalone said that Kathy Wyrosdick, City Planner, can get a list and itemize all of the benefits of registration better than he can.

Councilmember Weber said that he just had a simple question.

Councilmember Blosser noted that it was not that simple.

Councilmember Weber said that it was simple in the fact that an unreasonable search . . .

Kathy Wyrosdick, City Planner, said that she knew it was not necessarily the topic that is being discussed tonight.

Councilmember Weber said that he was just asking a question.

Ms. Wyrosdick said that from her perspective of dealing with this issue for three years and doing exhaustive research and working on a state-wide level of this issue, it was would of extreme benefit to have a way where we can at least try to get additional information on these properties. She noted that it was not easy to find and that is one of the reasons why WV is not at the forefront of dealing with vacant and dilapidated properties because we don't have very good information on what these properties, where they are, the condition that they are in, and she said that she tried to make it easy and use water accounts but the data is not built around finding these properties so it

is not usable data. She said that being able to identify these properties and identify the true property owners can be extremely valuable in not only re-occupying these buildings so we can connect developers with these property owners when we know where they are at but we can also when there is a problem property that we can litigate we now know who to contact because that is an issue and as much as that property owner has rights so does the person who lives beside them and so does the person who lives beside them who has to deal with all of the vagrants coming in and out of that property and all of the other nuisances that are coming to that property. She noted that they all have property rights and she thought with our proposal, Council will see that when we have an opportunity to talk about the Vacant Property Registration, absent a fee, is a very just proposal and that we have connected it with a B&O Tax credit. She went on to say that what we have here is a very good connection with what we really want done in the City. She noted that we want people to move into our City and we want businesses to thrive and we don't want to always be the bad guys.

Councilmember Weber stated that he was for incentivizing rather than penalties and his question is that we already know and have a list of the vacant properties . . .

The City Planner and the Mayor replied no, we don't.

Councilmember Weber then said that we are not . . . the Code Enforcement Officers . . . that is all I hear is that we are going to list the blighted and vacant and dilapidated properties and again he goes downtown and there is our wonderful BJ Goodrich building still standing there and the only reason Magnolia Manor came down was because it burnt . . .

The City Manager replied that was not true.

Councilmember Weber said that it was a nice building until it caught on fire.

Mr. Rogers said that it actually took three or five court appearances before it was actually brought down.

Councilmember Weber asked if the owner was from West Virginia or out of state.

Mr. Rogers replied West Virginia but not within the corporate limits.

Councilmember Weber noted that we have a lot of out of state owners that we can't prosecute because they are out of state. He then said that he was

wondering about the people who are obeying the law, being prosecuted because they are obeying the law so we are making a law to break another law. He said that we are making a law to break the law of the 4th Amendment so we are going to make a law that breaks that law.

Mr. Sansalone said that he disagrees with Councilmember Weber's analysis that the law violates the 4th Amendment.

Councilmember Weber then said of course it does. He said that if you have a reasonable search and seizure, it breaks the law.

Mr. Sansalone said that there is not an element of search or seizure and he did not think it was unreasonable . . .

The Mayor stopped this conversation.

The City Planner said that this isn't what

The City Manager said that this is not about the Home Rule Plan.

Councilmember Weber mentioned it past of the Home Rule listed on page 8 and page 22 where we are listing dilapidated and vacant properties . . .

Mr. Rogers said that we are listing them in the context of having the B&O Tax credit. He said that the discussion of a Vacant Property Registration is much further down the line than it is in the Home Rule.

Councilmember Weber said that is why in the beginning he asked if it was about specifics or the general overall plan.

Mr. Rogers said no, the general overall plan.

Mayor Straight said as you read it, jot you some notes down if you have further questions on it.

Councilmember Burdick stated that it was a welcome sign to get rid of some of the blight from his district which is Jackson Addition and Bellview. He added that the residents of Bellview, as a whole, the Old Farm Fresh has been a bad building for too long and something needs to go on, either it comes down, refurbished or turned into a mini park or something for the community. He added that we have to do something.

Councilmember Weber noted that Bellview was just one community and we

have a lot of other communities around.

The Mayor asked if there was anyone else to speak against the written plan.

Councilmember Weber noted that he was not speaking against it.

Councilmember Blosser stated that he would like to speak in favor. He said that as far as the Municipal Sales Tax, he strongly was in favor of the layout of that in terms of targeting the pension funds. He said that ever since his first budget work session and the Finance Director going over those pension fund numbers, it has worried him every day since then and he applauds the Finance Director, City Manager, and staff for working on that and he thought that was something that could turn the tide and this City not having to deal with bankrupt pension funds years down the road by taking action now and, therefore, he spoke in favor of the Home Rule proposal as a whole and also because that provision is in there as well.

Mr. Rogers added that with the reduction in the B&O Tax categories, one of the things that this allows us to do as we go forward, we have eliminated that category of Manufacturing and eliminated that category of Wholesale, and this gives us the opportunity to partner with folks like Main Street, the Economic Development Authority with the State, and we know that Manufacturing is a tuff struggle not only in Marion County and in Fairmont but there is a whole group of folks that are out there that there is a huge potential for Wholesale businesses and now with this proposal and moving forward there is not a B&O Tax on that industry if you bring that type of a business to Fairmont. He noted that is something that we don't have the ability to do and when we get out there and start competing for people coming to WV and coming to Marion County and coming to Fairmont and you are competing against Pennsylvania, Ohio, and Virginia and those are Home Rule states and they can sit down with the locals there and have discussions about tax incentives and abatements and that is a disadvantage that we have had in West Virginia before and perhaps just this little measure can do something that starts making a difference of being able to have those types of discussions with folks in an economic development environment.

Councilmember Seifrit thanked City staff for this proposal. She mentioned that one thing she really liked about it is that the taxes will be collected by the State so nobody can be accused of putting it in their pocket.

The Mayor stated that last night during a meeting with the Mayor's from the surrounding towns, he explained to them the Home Rule and dilapidated

buildings and stuff and now they are trying to get in line and he told them to get in touch with the City Planner to help them walk through this process. He noted that it was something that we have to look at the pension plans and, if not, five years from now we will be in trouble.

Mr. Rogers closed by saying that one thing that is nice about the Home Rule application is that these are four proposals that we are putting forth hoping that the Municipal Home Rule Board will admit Fairmont into the program but once you are in, we have the ability to sit here and talk about other decisions that we need to make locally and the power to do those things locally. He said that you have the ability to go back and amend this application and say that we have another problem here in Fairmont and the Legislature or the current statute doesn't allow us to address that and we think we have come up with a solution to that. He stated that allows us to continue to grow and make those decisions locally. He mentioned that he often hears staff say that you have conversations with people in church and at the grocery store and a lot of times that is where our solutions come from is talking to our people locally and that is where you get your ideas and a lot of our discussions generate locally. He then stated that he is a big proponent of Home Rule and he clearly wants to see Fairmont be a Home Rule City and he is thankful that the Legislature has approved it to get to where we are because he thinks we can do much better if we are in control of our own destiny.

There being no one to speak to the proposed written plan, the public hearing was called to a close at 6:11 p.m.

ADJOURNMENT

Mayor Straight entertained a motion for adjournment.

Motion:

Councilmember Smith moved to adjourn the meeting. Councilmember Weber seconded the motion.

Mayor Straight declared the meeting adjourned by voice vote of Council at 6:12 p.m.



AFFIDAVIT OF PUBLICATION

013874

State of West Virginia

County of Marion, to wit:

I, Eric Goreau, being first duly sworn upon my oath,

do dispose and say that I am Legal Clerk of the **TIMES WEST VIRGINIAN** a corporation, publisher of the newspaper entitled the **TIMES WEST VIRGINIAN** an independent newspaper:

that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below, that such newspaper is regularly published daily except Saturday and Sunday, for at least fifty weeks during the calendar year, in the Municipality of Fairmont, Marion County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforementioned municipality and Marion County; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial or social nature, and for current happenings, announcements, miscellaneous reading matter, advertisements and other notices.

that the annexed notice of Public Hearing was duly published in said newspaper once week for two successive weeks (Class II), commencing with the issue of the 24 day of February, 2014, and ending with the issue of the 3 day of March, 2014, and was posted at the front door of the Marion County Courthouse on the 24 day of February, 2014; that said annexed notice was published on the following dates: February 24, 2014 March 3, 2014 and the cost of publishing said annexed notice as aforesaid was \$ 86.37.

Taken, subscribed and sworn to before me in said county this 5 day of March, 2014.

My commission expires Jan 24, 2020

Eric Goreau
Notary Public of Marion County, West Virginia

NOTICE OF
PUBLIC HEARING
ON PROPOSED
HOME RULE PLAN
OF THE
CITY OF FAIRMONT,
WEST VIRGINIA
The West Virginia Legislature
in 2013 expanded

the Municipal Home Rule
Pilot Program created
pursuant to the provisions
of West Virginia
Code §8-1-5a to allow
participation by additional
municipalities. The City
of Fairmont desires to
participate in the expanded
Municipal Home Rule
Pilot Program and has
prepared a written home
rule plan.

West Virginia Code
§8-1-5a(g) requires that
the City of Fairmont hold
a public hearing on the
written home rule plan
prior to submitting the
written home rule plan to
the Municipal Home Rule
Board.

NOW, THEREFORE,
PLEASE TAKE NOTICE
THAT THE COUNCIL FOR
THE CITY OF FAIRMONT
WILL HOLD A PUBLIC
HEARING ON THE 25TH
DAY OF MARCH, 2014,
AT 5:30 P.M., WHICH
PUBLIC HEARING
SHALL BE HELD IN
COUNCIL CHAMBERS,
AT THE CITY OF FAIRMONT
PUBLIC SAFETY BUILDING,
500 QUINCY STREET,
FAIRMONT, MARION COUNTY,
WEST VIRGINIA.

A copy of the City of Fairmont's
proposed written home rule plan is
available for public inspection at
the Office of the Clerk of the City
of Fairmont, Room No. 312, Third
Floor, City-County Complex, 200
Jackson Street, Fairmont, Marion
County, West Virginia.

At the public hearing anyone
interested in the matter may
appear and be heard.

Dated at Fairmont, West Virginia
this the 14th day of February, 2014.

JANET L. KELLER
CITY CLERK OF THE
CITY OF FAIRMONT
Times: February 24,
March 3, 2014

CERTIFICATION

STATE OF WEST VIRGINIA
COUNTY OF MARION
CITY OF FAIRMONT, TO WIT:

I, Janet L. Keller, Clerk of the City of Fairmont, West Virginia, keeper of the official records of said City, do hereby certify that the attached is a true copy of Ordinance No. 1615, being **AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT ADOPTED PURSUANT TO THE PROVISIONS OF WEST VIRGINIA CODE §8-1-5a AUTHORIZING THE CITY OF FAIRMONT TO SUBMIT A WRITTEN HOME RULE PLAN TO THE MUNICIPAL HOME RULE BOARD IN ORDER TO PERMIT THE CITY OF FAIRMONT'S PARTICIPATION IN THE MUNICIPAL HOME RULE PILOT PROGRAM.**

The Ordinance was adopted by the City Council for the City of Fairmont, West Virginia, at a regular meeting held on April 22, 2014.

Given under my hand and seal this the 28th day of May, 2014.



Janet L. Keller
CITY CLERK

ORDINANCE NO. 1615

AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT ADOPTED PURSUANT TO THE PROVISIONS OF WEST VIRGINIA CODE §8-1-5a AUTHORIZING THE CITY OF FAIRMONT TO SUBMIT A WRITTEN HOME RULE PLAN TO THE MUNICIPAL HOME RULE BOARD IN ORDER TO PERMIT THE CITY OF FAIRMONT'S PARTICIPATION IN THE MUNICIPAL HOME RULE PILOT PROGRAM

WHEREAS, in 2013, the West Virginia Legislature expanded the Municipal Home Rule Pilot Program created pursuant to the provisions of West Virginia Code §8-1-5a to allow participation by additional municipalities;

WHEREAS, the City of Fairmont desires to participate in said program and has prepared a written home rule plan, which plan complies with the provisions of the aforementioned code section;

WHEREAS, a public hearing on said plan was slated for March 25, 2014, at 5:30 p.m., or as soon thereafter as the matter could be heard at 500 Quincy Street, Fairmont, West Virginia, and a notice of said public hearing was published as a Class II legal advertisement in the Times West Virginia, a newspaper in general circulation in Fairmont and Marion County, West Virginia, on February 24, 2014 and March 3, 2014, all as required by the aforementioned code section;

WHEREAS, all other general notice requirements relating to said public hearing were satisfied; and

WHEREAS, following the public hearing, the Council for the City of Fairmont by a vote of 8 to 0, authorized the submission of said plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FAIRMONT THAT:

SECTION 1. AUTHORIZATION: The City Manager for the City of Fairmont be and is hereby authorized, empowered and directed to submit the City of Fairmont's Home Rule Plan to the Municipal Home Rule Board in order to permit the City of Fairmont's participation in the Municipal Home Rule Pilot Program created by West Virginia Code 8-1-5(a), and the City Manager is further authorized, empowered and directed to execute and deliver the agreement relating to firearms, ammunition and firearm accessories, the State of West Virginia Fees Statement, and to do all acts and things as may be necessary and appropriate to carry out the purpose and intent of this Ordinance, all with such change or changes from the form of the plan as approved hereunder as the City Manager executing the same may approved.

SECTION 2. EFFECTIVE DATE: This Ordinance shall take effect thirty (30) days after adoption.

Adopted this the 22nd day of April, 2014.


MAYOR

ATTEST:


CITY CLERK

WE, the undersigned officials of the City of Fairmont, West Virginia, do hereby certify that Ordinance No. 1615:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT ADOPTED PURSUANT TO THE PROVISIONS OF WEST VIRGINIA CODE §8-1-5a AUTHORIZING THE CITY OF FAIRMONT TO SUBMIT A WRITTEN HOME RULE PLAN TO THE MUNICIPAL HOME RULE BOARD IN ORDER TO PERMIT THE CITY OF FAIRMONT'S PARTICIPATION IN THE MUNICIPAL HOME RULE PILOT PROGRAM

was introduced and publicly read by synopsis at the Regular Meeting of Council held March 25, 2014. The second reading was held on April 8, 2014 and was published in the Times-West Virginian on April 14, 2014, pursuant to Charter provisions Section 2.13(d); a public hearing was held on April 22, 2014. The Clerk read the title only and copies were available to the public as required by Ordinance No. 499. The Ordinance was duly adopted pursuant to the Charter of the City of Fairmont and West Virginia Code; signed by the undersigned officials and filed in the office of the City Clerk.

Adopted by Council of the City of Fairmont, West Virginia, this the 22nd day of April, 2014.

ATTEST:

Janet L. Keller
CITY CLERK

Ronald F. Thayer
MAYOR

A TRUE COPY:

Ronald F. Thayer
MAYOR, CITY OF FAIRMONT, WEST VIRGINIA

Janet L. Keller
CLERK, CITY OF FAIRMONT, WEST VIRGINIA

APPROVED AS TO FORM:

ATTORNEY, CITY OF FAIRMONT, WEST VIRGINIA



CITY OF FAIRMONT

CITY/COUNTY COMPLEX
P.O. Box 1428
200 Jackson Street
Fairmont, West Virginia 26555-1428
(304) 366-6211
(304) 366-0228 FAX
www.fairmontwv.gov

May 28, 2014

West Virginia Municipal Home Rule Board

City of Fairmont, West Virginia' Home Rule Plan dated May 28, 2014

OPINION OF CITY ATTORNEY

Ladies and Gentlemen:

I have represented the City of Fairmont, West Virginia (the "City"), in connection with the City's written Home Rule Plan (the "Home Rule Plan") prepared pursuant to the provisions of West Virginia Code 8-1-5a, et seq., the West Virginia Municipal Home Rule Pilot Program.

In this connection, I have reviewed (a) the Constitution of the State of West Virginia and other applicable law, in particular the provisions of West Virginia Code §8-1-5a et seq., the West Virginia Municipal Home Rule Pilot Program statute; (b) certain other provisions of the West Virginia Code reference in proceedings taken by the City, including a public hearing on the "Home Rule Plan" which was held on March 25, 2014 at 5:30 p.m., ("the Public Hearing"), an ordinance of the Council for the City of Fairmont authorizing the submission of the "Home Rule Plan" to the West Virginia Municipal Home Rule Board (the "Ordinance") adopted on April 22, 2014; (c) a complete copy of the written "Home Rule Plan" ; and (d) such other information and documents as I have deemed relevant in order to render this opinion.

Based upon the foregoing, it is my opinion that:

1. The City is a political subdivision of the State of West Virginia existing pursuant to and constrained by the Constitution and laws of the State of West Virginia, including Chapter 8 of the West Virginia Code.
2. The City has duly conducted the Public Hearing and all statutory notice and publication requirements have been satisfied.
3. The City has duly adopted the Ordinance and all statutory notice and publication requirements have been satisfied.
4. The Home Rule Plan does not violate any of the provisions of West Virginia Code §8-1-5a, et seq., the West Virginia Municipal Home Rule Pilot Program.

5. To the best of my knowledge after reasonable investigation, neither (a) the adoption of the Ordinance, nor (b) the submission of the Home Rule Plan, nor (c) the fulfillment of or compliance with the terms and conditions of the West Virginia Home Rule Pilot Program, breaches or violates any provision of any law, rule, regulation, contract, lease, instrument or other agreement or any judgment, order or decree of any court or other governmental authority to which the City is a party or by which the City is bound.

6. There is no litigation or any proceeding before any governmental agency pending or, to the best of my knowledge after reasonable investigation, threatened against the City (or any official thereof in an official capacity) with respect to (a) the City's organization or existence, (b) the City's authority to participate in the West Virginia Home Rule Pilot Program, (c) the adoption of the Ordinance or the conduct of the Public Hearing of other proceeding relating to the City's Home Rule Plan, (d) the title to office of any City governing board member or any other City officer, or (e) any proposed aspect of the City's Home Rule Plan.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kevin V. Sansalone".

Kevin V. Sansalone, Esq.
Attorney for the City of Fairmont

KVS/me

AFFIDAVIT OF CITY FINANCE DIRECTOR
STATE OF WEST VIRGINIA FEES STATEMENT

STATE OF WEST VIRGINIA
COUNTY OF MARION, TO WIT:

This day personally appeared before the undersigned Notary Public in and for the County and State aforesaid, Eileen Layman, who, being first duly sworn, upon her oath, deposes and says:

1. That she is the Finance Director for the City of Fairmont and that as such she has personal knowledge of the facts set forth in this affidavit;
2. That as of the date of this affidavit, all fees, assessments and charges due from the City of Fairmont to the State of West Virginia, which may have been due and owing, have been paid in full.

And further affiant sayeth naught.


AFFIANT

Taken, subscribed and sworn to before me, the undersigned authority, this the 28th day of May, 2014.


NOTARY PUBLIC

My Commission Expires:

November 13, 2016





Marion County Chamber of Commerce

March 28, 2014

WV Municipal Home Rule Board
WV Development Office
State Capitol Complex Bldg., 6 Room 553
Charleston, WV 25305-0311

Dear Members of the Municipal Home Rule Board:

I am writing this letter in support of the City of Fairmont and their application for Home Rule in the State of WV.

Working very hard to bring all entities to the table and hear numerous different perspectives, I applaud the City of Fairmont for in their efforts to establish a program that will be of much benefit to the business community in Fairmont.

From a Chamber perspective, offering B&O tax credits for business longevity, re-use of vacant buildings, and historic tax credits is a win-win for the business community. In addition, Fairmont is proposing .04 cut to retail B&O and eliminating **all** B&O for manufacturers and wholesalers. We all feel this will not only assist with business retention in the City of Fairmont, but also help in attracting new businesses.

The above benefits to the business community far outweigh the minimum addition of a proposed 1% Sales Tax. We support this proposed tax, as it will assist the City with their long term liabilities in the fire and police pension funds, while addressing economic and infrastructure projects. It is our belief that the sales tax will also help with the current vacant and dilapidated housing situation that hinders our business climate.

For the reasons above, we strongly support the City of Fairmont and look forward to working with them as a Home Rule city in WV.

Sincerely,

Tina M. Shaw

Tina M. Shaw, President
Marion County Chamber of Commerce
110 Adams St.
Fairmont, WV 26554
tms@marionchamber.com



Jay Rogers, City Manager
City of Fairmont
200 Jackson Street
Fairmont, WV 26554

RE: Home Rule, Fairmont

Dear Mr. Rogers,

I write on behalf of Main Street Fairmont in support of the City of Fairmont and the application for Home Rule in the state of West Virginia. What you propose for our city and our business community will lay the foundation for viable economic and community development. Your plan to incentivize the adaptive reuse of vacant buildings is a testament to forward thinking and an asset to the revitalization of our community.

The introduction of the Home Rule model couldn't be more appropriately timed. Business development in Fairmont's downtown historic district is moving at a remarkable pace. The phased relocation of Pierpont Community & Technical College to the district promises upwards of 400 people and the 2015 completion of the WV State complex will see more than 600 combined employees and consumers daily. The proposed tax credits in your application complement the increased demand for new businesses in and around our city center making Fairmont perfectly poised for growth.

We applaud your vision and commitment, enlisting our city in a progressive initiative like the Home Rule Program. We look forward to welcoming the changes that come with your valuable, innovative plan and will support your efforts every step of the way.

Sincerely,

A handwritten signature in blue ink that reads "K. Greene".

Kate Greene, Director
Main Street Fairmont