City of Elkins

Regular Council Meeting

September 21, 2023
7:00 PM
401 Davis Avenue
Council Chamber, 2nd Floor

AGENDA

1. **Invocation and Pledge of Allegiance**
2. **Call to order and roll call**
3. **Public comment**
4. **Minutes**
   a. Proposed minutes for the meeting of September 7, 2023
5. **Correspondence and Notifications**
6. **Committee Reports**
7. **Staff reports**
   a. Treasurer's report
8. **Approval of vendor invoice payments**

(Available for public review in the city clerk's office two business days before this meeting, as required by W. Va. Ethics Commission Open Meetings Advisory Opinion 2012-04.)

Vendor invoices presented for approval: Sept. 4-15, 2023

9. **New business**
   a. Resolution 1686: Accepting the Terms of A Settlement Agreement in the City of Elkins v. Thomas Hammer et al Civil Action And Authorizing Mayor Marco To Execute Said Settlement Agreement
   b. Resolution 1687: Ratifying and approving agreement with WV DEP for grant funding demolitions
   c. Resolution 1688: Ratifying lease with WV DOH for All Veterans Memorial property
   d. Resolution 1689: Authorizing the city clerk and city attorney to initiate the process for a change to the Elkins City Charter under West Virginia Code §8-4-8
   e. ABCA floorplan extension endorsement for El Gran Sabor during Mountain State Forest Festival
   f. ABCA floorplan extension for Big Timber during Mountain State Forest Festival
   g. Proposal to cancel October 5 council meeting due to the Mountain State Forest Festival
10. **Mayor's comments**

11. Adjournment

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	September 21, 2023
Section:	Minutes
Category:	Action Item
Agenda Item Name:	Proposed minutes for the meeting of September 7, 2023
Recommended By:	City Clerk
Summary:	Proposed minutes of your meeting of September 7.
Fiscal Impact:	n/a
Recommendation:	Approve as presented.
Attachments:	1. city council - 2023_09_07 - minutes_proposed

ELKINS COMMON COUNCIL
REGULAR COUNCIL MEETING
MINUTES

401 Davis Avenue
Council Chamber, 2nd Floor
September 7, 2023
7:00 p.m.

Elkins Common Council met in regular session in the council chamber of city hall. Present were Mayor Jerry A. Marco; Councilpersons N.E. Bross-Fregonara, A.C. Carroll, R.C. Chenoweth, G.M. Hinchman, B.C. Kerns, C.C. Lowther, D.C. Parker, E. L. Plishka, L.S. Severino, and C.H. Thompson; City Treasurer T. Judy; Fire Chief S.D. Himes; Police Chief T. Bennett; Operations Manager M. Kesecker; City Attorney G. S. Roberts; and City Clerk S.R. Stokes (recording secretary).

PUBLIC COMMENT

There was no public comment.

MINUTES

Chenoweth **MOVED APPROVAL OF THE MINUTES OF THE MEETING OF AUGUST 17, 2023.** The motion carried.

CORRESPONDENCE AND NOTIFICATIONS

Council received the following correspondence and notifications:

a. Oct. 14: Davis Memorial Presbyterian Church closing Church Lane for mobile food pantry
b. Sept. 10-Sept. 30: Our Town fall scarecrow event downtown

PRESENTATION

Chad Ware of Davis Medical Center (DMC) presented information about DMC's merger with Vandalia Health.

APPROVAL OF VENDOR INVOICE PAYMENTS

Hinchman **MOVED APPROVAL OF THE INVOICES PRESENTED.** The motion carried.

The invoices in question were as specified on the following list, which is attached and made part of this record:

- Accounts Payable check transactions for the period August 14-September 1, 2023.

NEW BUSINESS

Chenoweth **MOVED APPROVAL OF RESOLUTION 1683: REAPPOINTMENT OF CITY TREASURER.** The motion carried.

Hinchman **MOVED APPROVAL OF RESOLUTION 1684: EMPLOYEE COMPENSATION CHANGES.** The motion carried.

Chenoweth **MOVED APPROVAL OF RESOLUTION 1685: POLICIES AND AGREEMENTS RELATED TO EPD HIRING INCENTIVES.** The motion carried.

Carroll **MOVED APPROVAL OF USING AS MUCH AS $250,000 FROM THE FINANCIAL STABILIZATION FUND FOR THE CITY HALL HVAC PROJECT.** The motion carried.

Lowther **MOVED APPROVAL OF A REQUEST FROM SMOKER FRIENDLY FOR ENDORSEMENT OF ABCA FLOORPLAN-EXTENSION APPLICATION.** The motion carried.

Chenoweth **MOVED APPROVAL OF A REQUEST FROM BEANDER'S FOR ENDORSEMENT OF ABCA FLOORPLAN-EXTENSION APPLICATION.** The motion carried.

The meeting was adjourned at 8:31 p.m.

Approved by council at the meeting of MONTH DAY, YEAR

_____
Jerry A. Marco, Mayor

Attest:

_____
Sutton Stokes, City Clerk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	September 21, 2023
Section:	Staff reports
Category:	Presentation
Agenda Item Name:	Treasurer's report
Recommended By:	City Treasurer
Summary:	Treasurer's report on revenues, bank balances, and budget control.
Fiscal Impact:	n/a
Recommendation:	Presentation; no action needed.
Attachments:	1. Treasurer's Report - 2023_09_21

General Fund Revenue Detail

	August Revenues	YTD Revenues	Percent of Revenues Collected Per Budget	Percent of Yr. Completed 16.66
Unassigned Fund Balance				384,359.00
County Tax	$153,935.86	$164,643.85	13.86%	1,188,238.00
B & O Tax	$60,746.26	$377,929.13	26.80%	1,410,000.00
Hotel/Motel Tax	$24,426.79	$52,760.06	27.06%	195,000.00
Gas & Oil Severance Tax	$0.00	$0.00	0.00%	25,000.00
2% City Utility Tax	$6,717.91	$13,520.99	19.32%	70,000.00
Utility Excise Tax	$19,363.99	$37,024.31	12.34%	300,000.00
Liquor Tax	$0.00	$21,932.24	23.84%	92,000.00
Police	$1,109.44	$1,901.44	7.92%	24,000.00
Municipal Court	$3,633.95	$6,252.28	10.08%	62,000.00
Code Enforcement	$3,340.20	$5,464.87	21.26%	25,700.00
Business License	$1,360.00	$6,280.00	21.66%	29,000.00
Intergovernmental	$13,948.30	$72,815.52	39.91%	182,471.00
Franchise/IRP Fees	$11,592.08	$31,885.81	22.78%	140,000.00
Phil Gainer Community Center	$3,100.00	$10,700.00	27.44%	39,000.00
Misc. Revenue	$27,729.88	$42,377.98	40.26%	105,260.00
Municipal Sales Tax	$0.00	$340,178.03	24.30%	1,400,000.00
TOTAL	**$331,004.66**	**$1,185,666.51**	**20.90%**	5,672,028.00

FY2024 Budget Control Summary

														YTD TOTALS
General Fund														
Revenues	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Revenues Over Expenses**	
	$854,861.85	$331,004.66	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$453,150.89	$1,185,866.51
Expenses	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**		
	$395,827.96	$336,887.66	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00		$732,715.62
Sanitation Fund														
Revenues	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Revenues Over Expenses**	
	$122,586.66	$129,954.36	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	-$207,839.79	$252,541.02
Expenses	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**		
	$368,877.28	$91,503.53	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00		$460,380.81
Sewer Fund														
Revenues	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Revenues Over Expenses**	
	$216,523.92	$207,080.31	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$14,607.54	$423,604.23
Expenses	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**		
	$216,314.62	$192,682.07	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00		$2,139,198.04
Water Fund														
Revenues	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Revenues Over Expenses**	
	$364,376.76	$405,886.10	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$168,970.30	$770,262.86
Expenses	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**		
	$308,961.40	$292,331.16	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00		$601,292.56
Fire Fund														
Revenues	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Revenues Over Expenses**	
	$38,221.11	$80,333.83	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	-$28,839.95	$118,554.94
Expenses	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**		
	$86,380.90	$61,013.99	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00		$147,394.89
Landfill Fund														
Revenues	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Revenues Over Expenses**	
	$5,921.54	$528.76	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$5,424.28	$6,450.30
Expenses	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**		
	$1,019.07	$6.95	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00		$1,026.02

Bank Account Name	Balance as of 8/31/2023
ARPA	$893,392.49
Elkins Building Comm. Sinking Fund	$0.00
Elkins Municipal Building Comm.	$0.00
Financial Stabilization	$937,410.93
Fire Pension Fund	$2,486,391.99
Firemen's Pension & Relief Fund	$0.00
Landfill Access Escrow	$1,813,689.60
Landfill Post Closure	$48,695.83
Payroll	$801.22
Police Forfeitures	$1,848.83
Police Pension Fund	$4,220,169.34
Police Seizures	$26,583.88
Policemen's Pension & Relief Fund	$0.00
Pooled Cash-Coal Severance Fund	$158,342.33
Pooled Cash-Fire Fund	$428,227.32
Pooled Cash-General Fund	$1,409,863.30
Pooled Cash-Landfill Fund	$123,647.16
Pooled Cash-Parks Fund	$921,103.87
Pooled Cash-Sanitation Fund	$1,042,029.20
Pooled Cash-Sewer Fund	$84,294.13
Pooled Cash-Water Fund	$217,601.44
Sewer Depreciation	$229,685.76
Sewer O&M	$366,492.69
Sewer Project-Phase II	$49.84
Water Depreciation	$142,137.79
Water O&M	$343,298.81

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	September 21, 2023
Section:	Approval of vendor invoice payments
Category:	Action Item
Agenda Item Name:	Vendor invoices presented for approval: Sept. 4-15, 2023
Recommended By:	City Treasurer
Summary:	Vendor invoices paid Sept. 4-15, 2023
Fiscal Impact:	Invoices presented represent $12,495 in expenses to the city.
Recommendation:	Approve the invoices as presented.
Attachments:	1. AP Check Report - 2023_09_21

VENDOR SET: 01 Elkins
BANK: ARPA America Rescue Plan Act
DATE RANGE: 9/04/2023 THRU 9/15/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
02508	Avertium, LLC							
I-603735	NIST CSF-Final	R	9/12/2023	12,495.00		000107		12,495.00

* * T O T A L S * *	NO			INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	1			12,495.00	0.00	12,495.00
HAND CHECKS:	0			0.00	0.00	0.00
DRAFTS:	0			0.00	0.00	0.00
EFT:	0			0.00	0.00	0.00
NON CHECKS:	0			0.00	0.00	0.00
VOID CHECKS:	0	VOID DEBITS	0.00			
		VOID CREDITS	0.00	0.00	0.00	

TOTAL ERRORS: 0

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
VENDOR SET: 01 BANK: ARPA TOTALS:	1	12,495.00	0.00	12,495.00
BANK: ARPA TOTALS:	1	12,495.00	0.00	12,495.00

VENDOR SET: 01 Elkins
BANK: Pool Pooled Cash
DATE RANGE: 9/04/2023 THRU 9/15/2023

VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00498		Naylor's Ace Hardware							
	C-CREDIT Sanitation	Credit Sanitation overpayment	N	9/13/2023	178.02CR		000000		
	C-CREDIT Street	Credits - overpayment Street	N	9/13/2023	326.08CR		000000		
	C-CREDIT Water Dist	Credits overpmt Water Dist	N	9/13/2023	635.29CR		000000		
	C-Corr entry	Corr entry	N	9/13/2023	9.90CR		000000		
	D-Corr 070123 Credit	Corr Credit-wrong vendor	N	9/13/2023	178.02		000000		
	D-Corr 070123 Street	Corr Credit wrong vendor	N	9/13/2023	326.08		000000		
	D-Corr 070123 WD	Corr Credit wrong vendor	N	9/13/2023	635.29		000000		
	I-194805	v-belt	N	9/13/2023	9.90		000000		
00741		Great-West Trust Company LLC							
	I-VF 202309051570	Voya	D	9/06/2023	665.00		005072		
	I-VF2202309051570	Voya AT	D	9/06/2023	100.00		005072		765.00
00116		Child Support Enforcement							
	I-CDS202309051570	Child Support	R	9/06/2023	571.48		014088		571.48
00121		Citizens Bank of WVFP							
	I-FP 202309051570	Fire Pension	R	9/06/2023	497.92		014089		497.92
00122		Citizens Bank of WVPP							
	I-PP 202309051570	Police Pension	R	9/06/2023	176.95		014090		
	I-PPN202309051570	Police Pension-2010 Forward	R	9/06/2023	432.19		014090		609.14
00147		COE Misc							
	I-MIS202309051570	Misc Reimbursements	R	9/06/2023	174.00		014091		174.00
00150		COE Payroll							
	I-T1 202309051570	Federal Withholding	R	9/06/2023	11,292.39		014092		11,292.39
00151		COE Payroll							
	I-T3 202309051570	FICA	R	9/06/2023	16,660.30		014093		
	I-T4 202309051570	Medicare	R	9/06/2023	4,348.08		014093		21,008.38
00152		COE Payroll							
	I-T2 202309051570	State Withholding	R	9/06/2023	4,863.00		014094		4,863.00
00203		Davis Trust Company							
	I-CC 202309051570	Employee Christmas Club	R	9/06/2023	2,360.00		014095		2,360.00
00747		Washington National Insurance							
	I-WN 202309051570	Washington National Insurance	R	9/06/2023	640.91		014096		640.91

VENDOR SET: 01 Elkins
BANK: Pool Pooled Cash
DATE RANGE: 9/04/2023 THRU 9/15/2023

VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00837		COE Payroll Reimbursement							
	I-001202309051570	Payroll Reimbursement	R	9/06/2023	44,103.25		014097		
	I-006202309051570	Payroll Reimbursement	R	9/06/2023	6,067.72		014097		
	I-036202309051570	Payroll Reimbursement	R	9/06/2023	13,678.75		014097		
	I-400202309051570	Payroll Reimbursement	R	9/06/2023	20,497.40		014097		
	I-401202309051570	Payroll Reimbursement	R	9/06/2023	13,448.52		014097		
	I-404202309051570	Payroll Reimbursement	R	9/06/2023	10,721.74		014097		108,517.38
01885		Colonial Life							
	I-CL 202309051570	Colionial Life-AT	R	9/06/2023	112.10		014098		
	I-CLP202309051570	Colonial Life-PT	R	9/06/2023	52.52		014098		164.62
00032		Absolute Assurance Drug Test L							
	I-1627	Random Testing Harris B	R	9/06/2023	35.00		014099		
	I-1628	Washington/Deighan	R	9/06/2023	84.00		014099		119.00
00143		COE General Fund 2							
	I-IND 09/2023	Monthly Indirects 09/2023	R	9/06/2023	12,955.92		014100		12,955.92
00149		COE Parks and Recreation							
	I-Support 09/2023	Monthly Support 09/2023	R	9/06/2023	25,483.00		014101		25,483.00
00235		Elkins Building Comm.							
	I-Pmt 09/2023	Monthly Payment 09/2023	R	9/06/2023	3,483.79		014102		3,483.79
00287		Garrett Equipment Rentals, LLC							
	I-66806	Cutting Edges/Cable Assembly	R	9/06/2023	2,153.70		014103		2,153.70
00471		Mon Power							
	I-LT31 Barron 0821	Consumption Barron 0718-081523	R	9/06/2023	11,417.49		014104		
	I-RRAve 081623	RR Ave 071523-081423	R	9/06/2023	42.76		014104		11,460.25
00483		Mountain Valley Bank							
	I-1202553-22 090723	Interest 1202553-22 090723	R	9/06/2023	198.42		014105		198.42
00498		Naylor's Ace Hardware							
	I-455760	blue marking paint	R	9/06/2023	19.98		014106		
	I-457754	drill, saw, impact driver	R	9/06/2023	178.39		014106		
	I-457849	chainsaw, chain oil, handle	R	9/06/2023	582.89		014106		
	I-457976	couplings/tools	R	9/06/2023	30.94		014106		812.20
00707		Trickett Hardware, Inc.							
	I-4014 3960	paint rollers/paintcopper pipe	R	9/06/2023	63.76		014107		63.76

VENDOR SET: 01 Elkins
BANK: Pool Pooled Cash
DATE RANGE: 9/04/2023 THRU 9/15/2023

VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
01183		Dan Stemple							
	I-EXP 083123	Reimb trips to PO and Midland	R	9/06/2023	7.86		014108		7.86
01731		Bradish Glass Inc							
	I-3953	Cullet PU 080823	R	9/06/2023	250.00		014109		250.00
01790		Crim Law Office PLLC							
	I-369	Attny Svs Water Bd 07/2023	R	9/06/2023	940.00		014110		940.00
02220		Long Branch Equipment LLC							
	I-LB314-2	Serv JD 410J	R	9/06/2023	500.00		014111		500.00
02322		Badger Meter							
	I-80136886	Beacon 082023	R	9/06/2023	211.40		014112		211.40
02431		Ferguson Waterworks #527							
	I-0836575	Mechanical Jts/MJ Wedge Rstrnt	R	9/06/2023	1,693.86		014113		1,693.86
00381		Grover C Jackson Jr							
	I-09/2023 RENT	Rent 09/2023	R	9/06/2023	1,800.00		014114		1,800.00
00047		Truist Governmental Finance							
	I-00005 092423	9948000234-05 092423	R	9/13/2023	2,596.05		014115		
	I-00006 092723	9948000234-06 092723	R	9/13/2023	2,643.26		014115		
	I-00007 091923	9948000234-07 091923	R	9/13/2023	4,984.55		014115		10,223.86
00082		Builders Group, Inc.							
	I-723347	fittings/primer/pipe	R	9/13/2023	139.42		014116		139.42
00156		COE Sewer Depreciation Account							
	I-Deposit 08/2023	Sewer Depr Deposit 08/2023	R	9/13/2023	5,106.72		014117		5,106.72
00158		COE Water Depreciation Account							
	I-Deposit 08/2023	Water Depr Deposit 08/2023	R	9/13/2023	9,857.57		014118		9,857.57
00202		Davis Trust Company							
	I-12755 092223	03113776 12755 092223	R	9/13/2023	4,256.84		014119		4,256.84
00211		Elkins Depot Welcome Center							
	I-H/M 07/2023	Hotel/Motel July 2023	R	9/13/2023	12,213.40		014120		12,213.40
00471		Mon Power							
	I-90009223390	consumption/lighting 082123	R	9/13/2023	42,289.54		014121		42,289.54

VENDOR SET: 01 Elkins
BANK: Pool Pooled Cash
DATE RANGE: 9/04/2023 THRU 9/15/2023

VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00479		Amtower Auto Supply, Inc.							
	I-194805	Tri-Power VBelt	R	9/13/2023	9.90		014122		
	I-196293	DEF/Battery Charger	R	9/13/2023	184.44		014122		194.34
00484		Mountaineer Gas Company							
	I-082523	Nat'l Gas 08/25/2023	R	9/13/2023	976.66		014123		
	I-Kump 081523	Kump Education Center	R	9/13/2023	47.42		014123		1,024.08
00540		Pitney Bowes Bank Inc							
	I-Pstg Alloc 08/2023	Postage Allocation 08/2023	R	9/13/2023	647.23		014124		647.23
00644		Smith Backhoe & Dozer Service,							
	I-104680	remove dirt pile from City Par	R	9/13/2023	1,072.50		014125		1,072.50
00711		Tygart Valley Transfer, Inc.							
	I-00016876	Res	R	9/13/2023	595.13		014126		
	I-00017147	Comm	R	9/13/2023	237.18		014126		
	I-00017155	Res	R	9/13/2023	747.17		014126		
	I-00017157	Comm	R	9/13/2023	771.49		014126		
	I-00017158	Res	R	9/13/2023	830.57		014126		
	I-00017176	Comm	R	9/13/2023	250.34		014126		
	I-00017180	Comm	R	9/13/2023	99.37		014126		
	I-00017187	Comm	R	9/13/2023	134.73		014126		
	I-00017204	Res	R	9/13/2023	117.53		014126		
	I-00017207	Res	R	9/13/2023	803.58		014126		
	I-00017209	Res	R	9/13/2023	619.16		014126		
	I-00017210	Comm	R	9/13/2023	457.68		014126		
	I-00017235	Comm	R	9/13/2023	94.59		014126		
	I-00017242	Res	R	9/13/2023	658.34		014126		
	I-00017243	Res	R	9/13/2023	544.64		014126		
	I-00017244	Comm	R	9/13/2023	534.12		014126		
	I-00017266	Comm	R	9/13/2023	301.94		014126		
	I-00017276	Res	R	9/13/2023	155.75		014126		
	I-00017279	Res	R	9/13/2023	559.92		014126		
	I-00017282	Res	R	9/13/2023	664.07		014126		
	I-00017283	Comm	R	9/13/2023	478.71		014126		
	I-00017302	Comm	R	9/13/2023	179.63		014126		
	I-00017305	Comm	R	9/13/2023	424.24		014126		
	I-00017317	Comm	R	9/13/2023	819.82		014126		
	I-00017318	Res	R	9/13/2023	676.49		014126		
	I-00017322	Res	R	9/13/2023	696.56		014126		
	I-00017340	Comm	R	9/13/2023	172.95		014126		
	I-00017356	Comm	R	9/13/2023	240.79		014126		
	I-00017365	Comm	R	9/13/2023	935.43		014126		
	I-00017366	Res	R	9/13/2023	837.97		014126		
	I-00017367	Res	R	9/13/2023	879.06		014126		
	I-00017382	Comm	R	9/13/2023	313.40		014126		
	I-00017387	Comm	R	9/13/2023	200.66		014126		

VENDOR SET: 01 Elkins
BANK: Pool Pooled Cash
DATE RANGE: 9/04/2023 THRU 9/15/2023

VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
	I-00017399	Res	R	9/13/2023	217.85		014126		
	I-00017400	Comm	R	9/13/2023	172.95		014126		
	I-00017403	Res	R	9/13/2023	610.56		014126		
	I-00017404	Comm	R	9/13/2023	336.34		014126		
	I-00017406	Res	R	9/13/2023	625.85		014126		
	I-00017418	Comm	R	9/13/2023	234.10		014126		
	I-00017437	Comm	R	9/13/2023	722.36		014126		
	I-00017440	Res	R	9/13/2023	616.30		014126		
	I-00017441	Res	R	9/13/2023	683.18		014126		
	I-00017443	Comm	R	9/13/2023	232.19		014126		
	I-00017467	Comm	R	9/13/2023	734.78		014126		
	I-00017475	Res	R	9/13/2023	117.53		014126		
	I-00017489	Res	R	9/13/2023	87.91		014126		
	I-00017490	Res	R	9/13/2023	646.87		014126		
	I-00017491	Res	R	9/13/2023	687.00		014126		
	I-00017492	Comm	R	9/13/2023	572.34		014126		
	I-16505	commercial	R	9/13/2023	172.89		014126		
	I-16525	residential	R	9/13/2023	642.91		014126		
	I-16527	residential	R	9/13/2023	562.98		014126		
	I-16528	commercial	R	9/13/2023	349.26		014126		
	I-16548	commercial	R	9/13/2023	75.59		014126		
	I-16555	commercial	R	9/13/2023	59.95		014126		
	I-16569	residential	R	9/13/2023	615.98		014126		
	I-16571	residential	R	9/13/2023	513.46		014126		
	I-16573	commercial	R	9/13/2023	442.22		014126		
	I-16590	commercial	R	9/13/2023	233.71		014126		
	I-16592	commercial	R	9/13/2023	408.34		014126		
	I-16599	commercial	R	9/13/2023	542.13		014126		
	I-16608	commercial	R	9/13/2023	109.47		014126		
	I-16617	residential	R	9/13/2023	578.62		014126		
	I-16618	commercial	R	9/13/2023	497.82		014126		
	I-16619	residential	R	9/13/2023	543.87		014126		
	I-16633	commercial	R	9/13/2023	357.95		014126		
	I-16654	residential	R	9/13/2023	603.82		014126		
	I-16656	commercial	R	9/13/2023	677.66		014126		
	I-16658	commercial	R	9/13/2023	221.54		014126		
	I-16659	residential	R	9/13/2023	553.43		014126		
	I-16680	commercial	R	9/13/2023	179.84		014126		
	I-16690	residential	R	9/13/2023	135.53		014126		
	I-16691	commercial	R	9/13/2023	218.07		014126		
	I-16708	residential	R	9/13/2023	768.02		014126		
	I-16711	residential	R	9/13/2023	935.70		014126		
	I-16716	commercial	R	9/13/2023	810.59		014126		
	I-16734	commercial	R	9/13/2023	147.70		014126		
	I-16737	animal control	R	9/13/2023	20.00		014126		
	I-16743	commercial	R	9/13/2023	60.82		014126		
	I-16749	commercial	R	9/13/2023	273.67		014126		
	I-16758	residential	R	9/13/2023	603.82		014126		

VENDOR SET: 01 Elkins
BANK: Pool Pooled Cash
DATE RANGE: 9/04/2023 THRU 9/15/2023

VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
	I-16759	residential	R	9/13/2023	443.09		014126		
	I-16760	commercial	R	9/13/2023	436.14		014126		
	I-16788	commercial	R	9/13/2023	518.67		014126		
	I-16792	commercial	R	9/13/2023	71.24		014126		
	I-16793	residential	R	9/13/2023	565.59		014126		
	I-16794	resdiential	R	9/13/2023	500.43		014126		
	I-16827	commercial	R	9/13/2023	262.38		014126		
	I-16835	residential	R	9/13/2023	616.85		014126		
	I-16836	residential	R	9/13/2023	523.02		014126		
	I-16837	commercial	R	9/13/2023	403.12		014126		
	I-16851	commercial	R	9/13/2023	158.12		014126		
	I-16857	commercial	R	9/13/2023	359.68		014126		
	I-16866	commercial	R	9/13/2023	272.80		014126		
	I-16872	commercial	R	9/13/2023	710.68		014126		
	I-16875	residential	R	9/13/2023	615.98		014126		
	I-16912	commercial	R	9/13/2023	234.58		014126		
	I-16920	residential	R	9/13/2023	165.94		014126		
	I-16927	commercial	R	9/13/2023	842.74		014126		
	I-16928	residential	R	9/13/2023	1,036.48		014126		
	I-16930	residential	R	9/13/2023	792.35		014126		
	I-16946	commercial	R	9/13/2023	172.02		014126		
	I-16970	residential	R	9/13/2023	591.65		014126		
	I-16971	residential	R	9/13/2023	530.84		014126		
	I-16972	commercial	R	9/13/2023	410.07		014126		
	I-16991	commcercial	R	9/13/2023	286.70		014126		
	I-16994	commercial	R	9/13/2023	214.59		014126		
	I-16995	residential	R	9/13/2023	61.68		014126		
	I-17008	residential	R	9/13/2023	558.64		014126		
	I-17009	commercial	R	9/13/2023	553.43		014126		
	I-17010	residential	R	9/13/2023	637.70		014126		
	I-17023	commercial	R	9/13/2023	355.34		014126		
	I-17025	residential	R	9/13/2023	83.40		014126		
	I-17040	residential	R	9/13/2023	546.48		014126		
	I-17054	commercial	R	9/13/2023	173.76		014126		
	I-17055	residential	R	9/13/2023	577.75		014126		
	I-17056	commercial	R	9/13/2023	496.08		014126		
	I-17080	commercial	R	9/13/2023	178.97		014126		
	I-17093	commercial	R	9/13/2023	374.45		014126		
	I-17102	commercial	R	9/13/2023	104.26		014126		
	I-17109	residential	R	9/13/2023	661.16		014126		
	I-17112	residential	R	9/13/2023	478.71		014126		
	I-17113	commercial	R	9/13/2023	814.93		014126		54,640.97

VENDOR SET: 01 Elkins
BANK: Pool Pooled Cash
DATE RANGE: 9/04/2023 THRU 9/15/2023

VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00812		WV Regional Jail and Correctio							
	I-8123B49F	14 Inmate Days TVRJ	R	9/13/2023	762.72		014127		762.72
00992		McNeil & Company							
	I-4819207	Commercial Pkg 080123	R	9/13/2023	3,164.37		014128		
	I-4826207	Inland Marine 080123	R	9/13/2023	1,200.00		014128		
	I-4832207	Umbrella-Comm 080123	R	9/13/2023	448.40		014128		4,812.77
01062		R L Parrack, LLC							
	I-0823	silencer mount/flash hiders	R	9/13/2023	243.99		014129		243.99
01313		COE Water O & M Account							
	I-Deposit 08/2023	Water O&M Deposit 08/2023	R	9/13/2023	12,902.14		014130		12,902.14
01390		Phoenix Solutions, LLC							
	I-5413	chemicals	R	9/13/2023	6,635.69		014131		
	I-5444	Plant Chem & Pump	R	9/13/2023	5,925.34		014131		12,561.03
01449		Dodson Pest Control							
	I-23-173102-0842	Pest control serv 08/22/23	R	9/13/2023	60.00		014132		60.00
01727		Enterprise FM Trust							
	I-FBN4837072	Fleet Leases 09/2023	R	9/13/2023	18,571.14		014133		18,571.14
01751		COE WWTP							
	I-202309054815	WTP Backwash	R	9/13/2023	730.78		014134		730.78
01817		WV Wood Technology Center							
	I-5779	custom engraved ornaments	R	9/13/2023	64.00		014135		64.00
01942		Elkins Municipal Building Comm							
	I-1214756-11 091523	01214756-11 091523	R	9/13/2023	4,833.20		014136		4,833.20
02098		Skasiks Quality Cleaners LLC							
	I-350807	Sayre - Alterations	R	9/13/2023	20.00		014137		20.00
02347		LEAF							
	I-15207802	Tosh ES4515AC 091323	R	9/13/2023	136.72		014138		
	I-15222917	Tosh E478S 091823	R	9/13/2023	96.74		014138		
	I-15264166	Toshiba 478S	R	9/13/2023	116.37		014138		
	I-15264167	Tosh E4515AC Contract 0925	R	9/13/2023	181.37		014138		531.20
02411		Zurich Insurance							
	I-1121397	9410723972 11/21/20	R	9/13/2023	3,687.01		014139		3,687.01

VENDOR SET: 01 Elkins
BANK: Pool Pooled Cash
DATE RANGE: 9/04/2023 THRU 9/15/2023

VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
02451		DataMax Corporation							
	I-16653	Collections 8/2023	R	9/13/2023	52.79		014140		52.79
02491		120Water							
	I-4145	Lead 8 Copper Plan	R	9/13/2023	4,164.74		014141		4,164.74
02515		Urse							
	I-2654725	21 Ram 5500 repairs	R	9/13/2023	1,283.31		014142		1,283.31
02516		Diamond Blade Warehouse							
	I-0570246-IN	Blacksmith Blades	R	9/13/2023	305.62		014143		305.62

* * T O T A L S * *	NO			INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	56			420,085.29	0.00	420,085.29
HAND CHECKS:	0			0.00	0.00	0.00
DRAFTS:	1			765.00	0.00	765.00
EFT:	0			0.00	0.00	0.00
NON CHECKS:	1			0.00	0.00	0.00
VOID CHECKS:	0	VOID DEBITS	0.00			
		VOID CREDITS	0.00	0.00	0.00	

TOTAL ERRORS: 0

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
VENDOR SET: 01 BANK: Pool TOTALS:	58	420,850.29	0.00	420,850.29
BANK: Pool TOTALS:	58	420,850.29	0.00	420,850.29

VENDOR SET: 01 Elkins
BANK: WATDP Water Depreciation
DATE RANGE: 9/04/2023 THRU 9/15/2023

VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
02316		FilmTec Corporation							
	I-951170563	membrane cell modules	R	9/12/2023	11,720.60		000045		
	I-951201468	seal kits	R	9/12/2023	557.32		000045		12,277.92
02517		J.T. Lynne Flow Elements							
	I-220/65027238	adapters, couplers	R	9/12/2023	2,692.91		000046		2,692.91

* * T O T A L S * *	NO			INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	2			14,970.83	0.00	14,970.83
HAND CHECKS:	0			0.00	0.00	0.00
DRAFTS:	0			0.00	0.00	0.00
EFT:	0			0.00	0.00	0.00
NON CHECKS:	0			0.00	0.00	0.00
VOID CHECKS:	0	VOID DEBITS	0.00			
		VOID CREDITS	0.00	0.00	0.00	

TOTAL ERRORS: 0

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
VENDOR SET: 01 BANK: WATDP TOTALS:	2	14,970.83	0.00	14,970.83
BANK: WATDP TOTALS:	2	14,970.83	0.00	14,970.83
REPORT TOTALS:	61	448,316.12	0.00	448,316.12

SELECTION CRITERIA

VENDOR SET: 01-Elkins
VENDOR: ALL
BANK CODES: Exclude: PCARD
FUNDS: All

CHECK SELECTION

CHECK RANGE: 000000 THRU 999999
DATE RANGE: 9/04/2023 THRU 9/15/2023
CHECK AMOUNT RANGE: 0.00 THRU 999,999,999.99
INCLUDE ALL VOIDS: YES

PRINT OPTIONS
SEQUENCE: CHECK NUMBER

PRINT TRANSACTIONS: YES
PRINT G/L: NO
UNPOSTED ONLY: NO
EXCLUDE UNPOSTED: NO
MANUAL ONLY: NO
STUB COMMENTS: NO
REPORT FOOTER: NO
CHECK STATUS: NO
PRINT STATUS: * - All

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	September 21, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1686: Accepting the Terms of A Settlement Agreement in the City of Elkins v. Thomas Hammer et al Civil Action And Authorizing Mayor Marco To Execute Said Settlement Agreement
Recommended By:	City Attorney
Summary:	Accepts settlement of a civil suit brought by the city against Thomas M. Hammer and Sharon Hammer for non-payment of fire fees in the Elkins Fire Department's First Due Area.
Fiscal Impact:	The settlement is for $57,450.
Recommendation:	Approve the resolution accepting the settlement.
Attachments:	1. Resolution #1686 - Hammer Settlement_ 2. Resolution 1686 - ATTACHMENT (Hammer Estate Settlement Agreement)

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1686)

September 21, 2023

Accepting the Terms of a Settlement Agreement in the City of Elkins v. Thomas Hammer et al. Civil Action and Authorizing Mayor Marco to Execute Said Settlement Agreement

---

WHEREAS, the City of Elkins ("City") caused to be commenced a Magistrate Court complaint that was removed to the Circuit Court of Randolph County, West Virginia, the Civil Action bearing the caption, The City of Elkins v. Thomas M. Hammer and Sharon Hammer, Civil Action #17-C-131 (the Civil Action) as amended to substitute the Estate of Thomas Hammer; and

WHEREAS, the Civil Action arose out of the non-payment of fire fees assessed by the City of properties in the First Due Area owned by defendants Hammer to which defendants Hammer filed a counterclaim; and

WHEREAS, City and defendants Hammer have settled all matters in dispute between and/or among them and the City and the defendants Hammer agree to release any and all claims set forth in this Civil Action based on the ruling in the decision of the West Virginia Supreme Court of Appeals, Patrick Elza v. City of Elkins, No. 18-0704 filed April 3, 2020; and

WHEREAS, the defendants Hammer have agreed to a settlement in the amount of $57,450.00, which has been tendered to the City in exchange for a release of all claims of the City as set forth in this civil action; and

WHEREAS, approving the terms of this settlement would be in the best interest of the citizens of the City of Elkins.

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Common Council approves the terms of this settlement, as set forth in the attached document and authorizes Mayor Marco to execute the Settlement Agreement and Release of All Claims on behalf of the City.

_____
Jerry A. Marco, Mayor

_____
Date

Attest: _____
Sutton Stokes, City Clerk

_____
Date

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This **SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS** (hereinafter "Agreement") dated this 14th day of August, 2023 by and between the **City of Elkins** (hereinafter "City") and the **Estate of Thomas M. Hammer and Sharon Hammer** (hereinafter "Hammer"). Both City and Hammer may be referred to herein collectively as "Parties" .

WHEREAS, the City caused to be commenced a Magistrate Court complaint that was removed to the Circuit Court of Randolph County, West Virginia, the Civil Action bearing the caption, The City of Elkins v. Thomas M. Hammer and Sharon Hammer, Civil Action #17-C-131 (the Civil Action);

WHEREAS, the Civil Action arose out of the non-payment of fire fees assessed by the City on properties in the First Due Area owned by Hammer to which Hammer filed a counterclaim;

WHEREAS, City and Hammer have settled all matters in dispute between and/or among them and the Parties agree to release any and all claims set forth in this Civil Action;

For and in consideration of this Agreement for which the terms are set forth below, Elkins and Hammer have agreed to a settlement in the amount of **$57,450.00**, the receipt and sufficiency of which is hereby acknowledged, Elkins, for itself, its successors, agents, assignee or representatives, does hereby release and discharge Hammer from any past or present claims, obligations, rights, damages, costs or liens arising out of or relating in any manner to the claims against Hammer in the Civil Action . Hammer, in further consideration of this Agreement, shall release and discharge any claims set forth in their counterclaim in the Civil Action.

The Parties, by counsel, shall execute a dismissal order pertaining to the Civil Action and the Parties do hereby agree and acknowledge that the dismissal of this Civil Action is voluntary and in consideration for the settlement proceeds and other terms to resolve the dispute as set forth in the provisions of this Agreement.

The Parties acknowledge that the settlement was made as to matters that were and remain disputed, and that the Hammer's performance of any duties or obligations arising out of the settlement shall not be, at any time or for any reason, construed as, or considered to be, an admission of liability by Hammer. It is expressly understood and agreed by the Parties that the settlement reflected herein has been made in good faith. In accordance with the West Virginia Supreme Court of Appeals' decisions, it is the intent of the Parties that, by making this good faith settlement prior to a judicial determination of any possible liability on the part of the Parties, the Parties are hereby relieved from any liability for contribution from any other person, firm, corporation or other entity who may be held liable to Plaintiff, including claims for contribution and indemnity. See *Board of Education of McDowell County v. Zando Martin &*

Milstead, Inc., 390 S. E. 2d 796 (W.Va. 1990); *Smith v. Monongahela Power Co.*, 429 S.E. 2d 643 (W.Va. 1993); and/or *Hager v Marshall*, 505 S.E.2d 640 (W.Va. 1998).

The Parties represent and warrant that no promise or agreement has been made by or to the Parties other than the promises or agreements that have been expressly and specifically set forth in this Agreement and the recitals herein.

The Parties agree to cooperate fully and execute any and all supplementary documents and take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement. The Parties shall execute, and shall cooperate fully in obtaining, any and all additional documents and shall take, and shall cooperate fully in taking, any and all additional actions, which may be necessary in order to fulfill the intent of, or the terms of, this Agreement, including executing a dismissal order dismissing this Civil Action.

The Parties hereto shall bear their own respective attorney's fees and costs arising from the actions of its own counsel in connection with the preparation and drafting of this Agreement, the matters and documents referred to herein, and all related matters.

This Agreement, and the terms thereof and conditions thereto, shall be governed by and construed or applied in accordance with the law of the State of West Virginia.

If, after the date hereof, any provisions of this Agreement are held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Agreement, such provision shall be fully severable. In lieu thereof, there shall be added a provision as similar in terms of such illegal, invalid, or unenforceable provision as may be effective, legal, valid and enforceable.

This Agreement contains the entire agreement between the Parties with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each. Any and all prior agreements, either written or oral, that are not embodied in the Agreement are of no force and effect. No modification of the Agreement shall be valid unless set forth in writing and signed by the parties.

IN WITNESS THEREOF, this **"Settlement Agreement and Release of All Claims"** has been executed as of this 14th day of August, 2023.

ACCORDINGLY, AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH ABOVE IN THE AGREEMENT:

Date

The City of Elkins by Its Mayor,
Jerry A. Marco

STATE OF WEST VIRGINIA
COUNTY OF RANDOLPH

I, the undersigned, a Notary Public of the aforesaid County and State, do hereby certify that before me this day personally appeared The City of Elkins by its Mayor, Jerry A. Marco, whose name is signed to the foregoing writing bearing date of _____ day of August 2023, has this day acknowledged the same before me in said County.

Given under my hand this 14th day of August, 2023.

Notary Public

My Commission Expires:

[Official Seal]

8/14/23
Date

The Estate of Thomas Hammer by Its Executor,
Phil Isner

STATE OF WEST VIRGINIA
COUNTY OF RANDOLPH

I, the undersigned, a Notary Public of the aforesaid County and State, do hereby certify that before me this day personally appeared Phil Isner, Executor of the Estate of Thomas Hammer whose name is signed to the foregoing writing bearing date of 14th day of August, 2023, have this day acknowledged the same before me in said County.

Given under my hand this 14th day of August, 2023.

Jordan E. Underwood
Notary Public

My Commission Expires:
March 14, 2027
[Official Seal]

8-14-23
Date

S Hammer
Sharon Hammer

STATE OF WEST VIRGINIA

COUNTY OF RANDOLPH

I, the undersigned, a Notary Public of the aforesaid County and State, do hereby certify that before me this day personally Sharon Hammer whose name is signed to the foregoing writing bearing date of 14th day of August, 2023, have this day acknowledged the same before me in said County.

Given under my hand this 14th day of August, 2023.

Jordan E Underwood
Notary Public

My Commission Expires:

March 14, 2027
[Official Seal]

NOTARY PUBLIC OFFICIAL SEAL
State of West Virginia
Jordan E Underwood
105 Park Street
Philippi WV 26416
My Commission Expires March 14, 2027

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	September 21, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1687: Ratifying and approving agreement with WV DEP for grant funding demolitions
Recommended By:	City Attorney
Summary:	The city received a grant award of $300,000 from the West Virginia Department of Environmental Protection in 2022. This resolution clarifies staff authorization to take action in facilitating use of this funding for the removal and demolition of dilapidated structures in Elkins.
Fiscal Impact:	None.
Recommendation:	Approve the resolution.
Attachments:	1. Resolution #1687 - Approving WVDEP Funding_

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1687)

September 21, 2023

Ratifying and Approving Agreement with the WVDEP Grant Funding Demolitions

---

WHEREAS, in 2022, the City of Elkins ("City") was one of the twenty-one West Virginia communities that was awarded grant funding from the West Virginia Department of Environmental Protection ("WVDEP") to remove abandoned and dilapidated structures across the State; and

WHEREAS, the City has proceeded to remove and demolish abandoned and dilapidated structures through the prescribed bidding process from this WVDEP grant funding of $300,000; and

WHEREAS, the City anticipates the removal and demolition of at least nine structures with this current WVDEP funding; and

WHEREAS, this WVDEP grant funding has enabled the City to remove and demolish these structures, improve these neighborhoods and revitalize the entire community of Elkins.

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Common Council approves and ratifies all actions taken by City personnel past and future to facilitate the WVDEP grant funding for the removal and demolition of dilapidated structures in the City.

_____
Jerry A. Marco, Mayor

_____
Date

Attest: _____
Sutton Stokes, City Clerk

_____
Date

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	September 21, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1688: Ratifying lease with WV DOH for All Veterans Memorial property
Recommended By:	City Attorney
Summary:	The city has leased the ground under the All Veterans Memorial from WV DOH since 1993. This resolution approves execution of a new lease extending the term another five years.
Fiscal Impact:	The cost of the lease is $1 per year. Although the lease assigns maintenance responsibility to the city, the grassy field is on the DOH maintenance plan and they mow it three times a year. The area around the memorial has been tended to by the All Veterans Memorial Council and its supporters since the 1990s.
Recommendation:	Approve renewal of the lease.
Attachments:	1. R-1688 - Renewing Lease with WV DOH for All Veterans Memorial property 2. R-1688 - ATTACHMENT all veterans memorial park original lease 3. R-1688 - ATTACHMENT City of Elkins All Veterans Renewal Lease

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1688)
September 21, 2023

Accepting Conditions of Lease between the West Virginia Division of Highways and the City of Elkins, and Authorizing Execution of Agreement

---

WHEREAS, The West Virginia Department of Transportation, Division of Highways ("DOH") is the owner of real property, containing 1.840 acres more or less and located southeast of the intersection of Davis Avenue and Randolph Avenue, in the City of Elkins, West Virginia, where the All-Veterans Memorial is located; and,

WHEREAS, the City of Elkins, West Virginia ("City") has leased this property from DOH since an agreement first entered into on July 29th, 1993, and renewed every five years since; and,

WHEREAS, the City has received a Lease (copy attached) with DOH for this property, renewing this arrangement for another five-year term; and,

WHEREAS, it appears that entering into this Lease is in the best interests of the citizens of the City of Elkins;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby accepts the terms of and authorizes execution of this Lease with DOH by the Mayor on behalf of the City of Elkins.

_____
Jerry A. Marco, Mayor

Attest:

_____
Sutton R. Stokes, City Clerk

8-12-93

LEASE NO.: 37-0842

PM92-8-RAND-2

THIS LEASE, Made the 29th day of July, 1993, by and between the WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS, Lessor, and the CITY OF ELKINS, Lessee.

WITNESSETH: That for and in consideration of the rent herein reserved and the conditions herein set out, Lessor does hereby demise, let and lease unto Lessee all that certain lot or parcel of land situate in the City of Elkins, Randolph County, West Virginia, containing 1.840 acres, more or less, as shown upon a plat attached hereto and made a part hereof, dated June 4, 1993.

This lease is subject to the following terms and conditions:

1. Purpose - Lessee may use said property for the purpose of constructing and maintaining a Veterans Memorial.

2. Rent - Lessee shall pay to Lessor the sum of ONE DOLLAR ($1.00) for each year of the term hereof.

3. Term - This lease is for a term of five (5) years from and after July 1, 1993. Lessee shall have the option to renew this lease for additional successive five (5) year terms to be exercised by giving Lessor a written notice of intention to renew not less than ninety (90) days before the expiration of the term herein created or renewal term.

4. Conditions and Restrictions - This lease is made subject to the existing electrical conduit and junction boxes located in the lease area. Lessee agrees to repair any damages to said facilities at it's own expense.

Lessee understands and agrees that said area of lease was acquired as a part of a Federal-Aid Highway Project and as such is subject to the following covenants and restrictions:

a. No dangerously flammable, volatile or explosive substances, lumber, wood products or other material which would constitute a hazard to the adjoining highway, shall be manufactured, stored or held thereon.

b. No signs or other advertising posters or devices shall be permitted on the area of lease other than those indicating proprietorship of said lease area and type of activities conducted. All signs shall have prior approval of Lessor.

c. No hazardous or unreasonably objectionable smoke, fumes, vapor or odors shall be permitted to be discharged on said highway.

5. Assignability - This lease may not be transferred, assigned or sublet without prior written approval of Lessor.

6. Possession - It is understood and agreed between the parties hereto that the Lessee shall have exclusive control and right of possession of said lease area, subject to the rights reserved in paragraph 8, during the term hereof and shall have sole responsibility for custody, maintenance, operation and use thereof, including the payment of any loss or damage occurring as a result of Lessee's operations and use, either to the adjoining highway facility or the public for personal injury, loss of life or property damage and shall save Lessor harmless from any and all claims of any nature whatsoever which may hereafter arise by reason of Lessee's use of the premises.

7. Nondiscrimination - Lessee, as a part of the consideration hereof, does hereby covenant and agree that, (1) no person, on the grounds of race, religion, color, sex or national origin shall be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination in the use of said lease area and facilities thereof; (2) that in connection with the construction of any improvements on said lands and the furnishing of services thereon, no discrimination shall be practiced in the selection and retention of first-tier subcontractors, and by first-tier subcontractors in the selection and retention of second-tier subcontractors; (3) that such discrimination shall not be practiced against the public in accommodations constructed or operated within the area of lease; and (4) that Lessee shall use the premises in compliance with all other requirements imposed by the Department of Transportation pursuant to Title 49, Code of Federal Regulations, Part 21, 49 C.F.R., and as said regulations may be amended. That, in the event of breach of any of the above nondiscrimination covenants, if Lessor has given to Lessee sixty (60) days' written notice of the alleged breach and Lessee has failed either to cure the breach or to take appropriate steps to prevent a reoccurrence, Lessor shall have the right to terminate this agreement and to reenter and repossess the lease area and hold the same as if said agreement had never been made or issued.

8. Inspection and Maintenance - Lessor reserves to itself and the Federal Highway Administration, the right, acting by and through their agents and employees, to enter upon said lease area at any time for purposes of inspection and determination of compliance with the terms hereof, and for any necessary maintenance, repair, construction or reconstruction of its adjacent highway facility. It is understood and agreed between the parties hereto, that Lessor, in conducting of such maintenance, repair, construction or reconstruction, shall have, to the extent reasonably necessary, the right to cause the interruption or suspension of Lessee's use of said lease area and may damage or alter Lessee's improvements thereon, with no liability to Lessor.

9. Termination - Lessor reserves the right to terminate this lease at any time by giving Lessee a written notice of termination thirty (30) days before the effective date thereof if: (1) Said property is needed for highway purposes; (2) Lessee violates any of the terms hereof; (3) Lessor desires to sell said property; or (4) Lessor does not desire to renew at the end of any five (5) year term.

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be signed by their duly authorized officers.

ATTEST:

Nancy L Eads
Title: Supervisor

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS

Fred Van Vorl
Commissioner

ATTEST:

Philip J. Grazioni, Jr
Title: Clerk

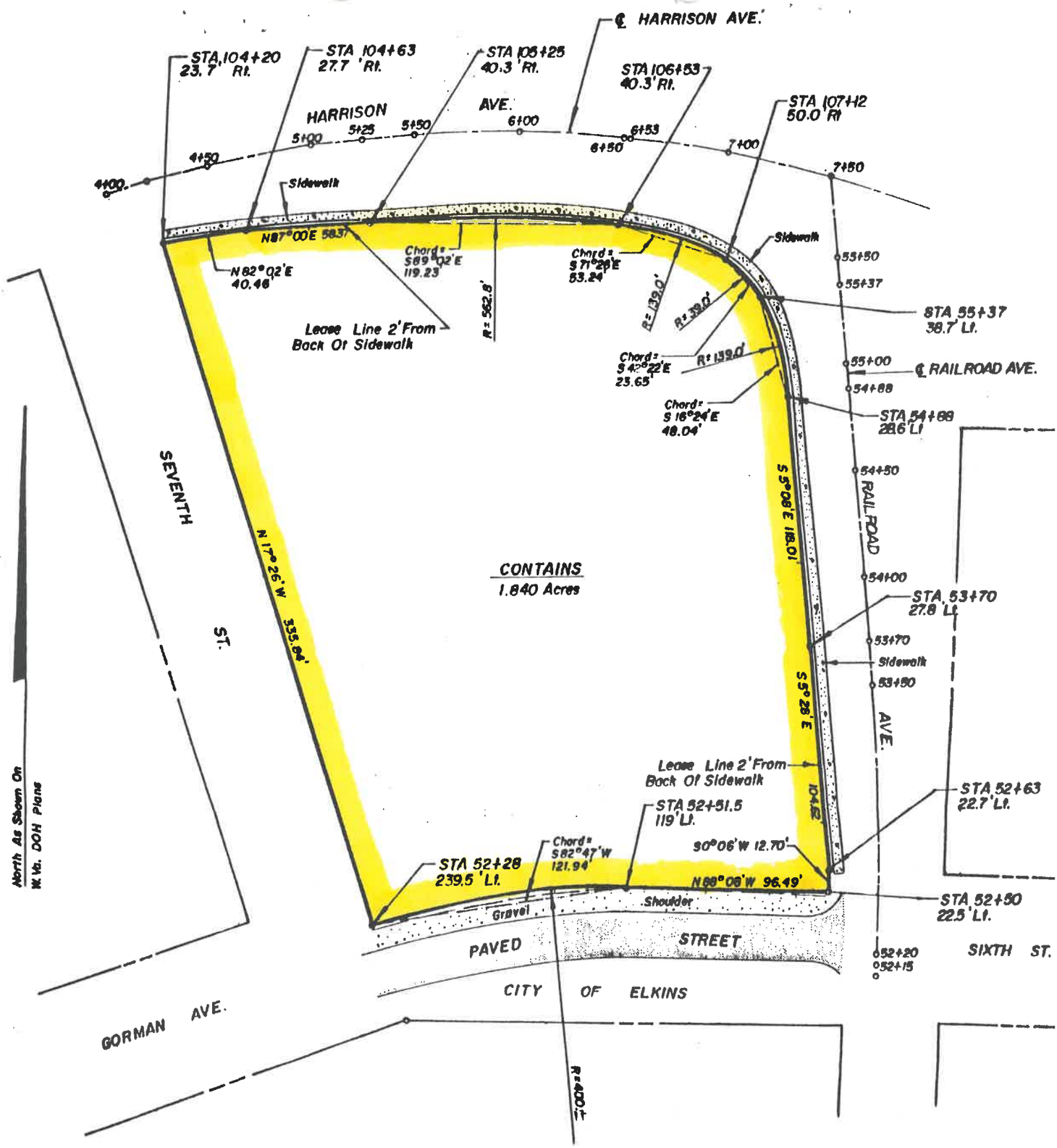
CITY OF ELKINS

By Jimmy D Hammond

Its Mayor

This instrument was prepared by:
Donald E. Santee, Attorney,
Right of Way Division, West Virginia
Department of Transportation,
Division of Highways.

APPROVED AS TO FORM THIS
27th DAY OF August 1993
Frank S Curia
ATTORNEY LEGAL DIVISION
WEST VIRGINIA DEPARTMENT
OF TRANSPORTATION
DIVISION OF HIGHWAYS



PLAT OF SURVEY FOR LEASE
BY THE
WV DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS
TO
CITY OF ELKINS

Project: S742-33-16.66 Randolph County
BRF-0033(028)

Scale: 1" = 60' Date: 6/4/1993

Elkins Corporation
Randolph County, W. Va.
Being, By Deed, A Part Of
That Land Conveyed By
CSX Transportation Inc.
To The West Virginia Department
Of Transporation, Division Of
Highways On Sept. 15, 1989
In Deed Book 401 At Page 516.
Contains 1.840 Ac.

WILLIAM D. SWECKER, C.E. REGISTERED No. 5953 STATE OF WEST VIRGINIA PROFESSIONAL ENGINEER

Prepared In Sept. 1992
By William D. Swecker
SWECKER ENG. & SURVEYING
Elkins, W. Va.

Lease No.: 0037-0842
PM 92-8-RAND-2

THIS LEASE, made effective the _____ day of _____, 2023, between the **WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS**, Lessor, and **the CITY OF ELKINS, West Virginia,** a corporation, Lessee.,

WHEREAS, Lessor is the owner of the hereinafter described property; and,

WHEREAS, Lessee has a need for said property in connection with constructing and maintaining a Veterans Memorial, which will not interfere with the purpose and use for which Lessor acquired the same and Lessor is agreeable to lease the property to Lessee on the terms and conditions herein;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of ONE DOLLAR ($1.00) for each year of the term hereof, and the conditions herein contained, Lessor does hereby lease unto Lessee the right to use a portion of that certain tract or parcel of land acquired from CSX TRANSPORTATION, INC, by deed dated September 15, 1989, and of record in the Office of the County Clerk of Randolph County, West Virginia in Deed Book 401, Page516, containing an area of one and eighty-four hundreths (1.84) acres as depicted on the plat attached hereto as Exhibit A and made a part hereof, hereinafter referred to as "Leased Property". Lessor expressively reserves the right to occupy the Leased Premises jointly with the Lessee.

The land will be used for a public purpose or use by a public entity if the one of the following definitions are met, the benefit of such public use serves as the sole consideration for the land. Please specify in the space provided if the land will be used for a public purpose or use by a public entity or other use.

"Public purpose" means the use of land defined as such by the decision of the appropriate public or private entity in order to ensure the interest of the peoples to acquire direct or indirect benefits from the use of the land. Public purposes include but are not limited to programs such as conservation, economic development, education, parks and recreation, public health, public safety, programs of assistance to the homeless or impoverished, and programs for older individuals.

"Public Entity" means, without limitation, a state agency, department, office, division, bureau, board, or commission, schools and school districts, intuitions of higher education, a city, county, special district, public authority, political subdivision, public corporation, or nonprofit corporation and for profit corporation carrying out a public purpose as defined herein.

This agreement is subject to the following terms and conditions:

1. Purpose - The Leased Property shall be used solely for the construction and maintenance of a Veterans Memorial

2. Term - This lease is for a term of five (5) years and commences on the first day of the month after all parties hereto have executed the lease and Lessor has received the Lessee's first (monthly or yearly) lease payment as provided in Section 6 herein. The date that such lease payment was received by Lessor shall be memorialized in Section 22 herein. This lease may be renewed for subsequent five (5) year terms at the sole discretion of Lessor, at which time Lessor will establish the lease payment for the renewal term, based upon then-existing market conditions. The duration of this lease does not create a long-term right.

3. Use of the Leased Property - Lessee shall use Leased Property in compliance with all applicable laws, rules and regulations. Lessee shall not do or permit any act, or create any situation by failure or refusal to act, that:

a. does or may impair the value of Leased Premises in whole or in part:
b. creates an unreasonable risk of harm to third persons or property on or off Leased Property;
c. constitutes a public or private nuisance or waste to Leased Property; or
d. precludes or may preclude future use of Leased Property for transportation purposes.

4. No Warranty - Lessor makes no warranties, either express or implied, as to any matter whatsoever, including, without limitation, the condition of Leased Property or its fitness for any purpose, including the intended purposes of Lessee hereunder.

5. Risk of Loss - Lessee shall bear the entire risk of loss and damage to Leased Property from any cause whatsoever. No loss or damage to Leased Property or any part thereof shall impair or lessen any obligation of Lessee under this Lease which shall continue in full force and effect. In the event of loss or damage to Leased Property, Lessee shall restore Leased Property to the same condition that existed before the loss or damage to the satisfaction of the Lessor.

6. Compensation - Lessee shall pay to Lessor the sum of **ONE DOLLARS ($1.00),** for each year of the term hereof. Such payments shall be remitted, in advance, to Finance Division, West Virginia Department of Transportation, Division of Highways, State Capitol Complex, Building 5, 1900 Kanawha Boulevard East, Charleston, West Virginia 25305-0430, upon receipt of invoice.

7. Conditions and Restrictions - Lessee understands and agrees that said leased area is subject to the following covenants and restrictions:

a. No flammable, volatile or explosive substances, hazardous materials, lumber, wood products or other material, which does or may constitute a fire ot other hazard or cause damage to third persons or property on or off Leased Property or cause contamination of property on or off Leased Property may be used, manufactured, stored or held thereon.
b. No signs, including advertising poster or devices, shall be permitted on Leased Property other than those indicating proprietorship of said property and type of activities conducted. All signs shall have prior written approval of the Lessor.
c. No hazardous or objectionable smoke, fumes, vapor or odors shall be discharged from Leased Premises.
d. Lessee accepts this agreement subject to any and all easements and encumbrances, including without limitation, existing utility lines, whether or not visible upon the ground.
e. Any recreational use of Leased Property will cease upon termination of this lease.

8. Improvements and Special Provisions - Lessee shall install on said property such equipment and devices deemed by it to be necessary or desirable for the accomplishment of the purpose stated above.

Lessee may remove any and all of its improvements on said property at the termination of this lease.

9. Relocation - It is understood and agreed between the parties hereto that, upon termination of this agreement, Lessee is not eligible for relocation monies and is not a “displaced person” as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 49 CFR 24.2(a)(9).

10. Indemnification - To the fullest extent permitted by law, Lessee at all times does, and shall, assume all risks of damage to its property, and the property of others, and injury or death to all persons (including, but not limited to, any employee or agency of Lessee or sub-lessee) resulting directly, or indirectly or otherwise by (a) the actions of omissions of Lessee, it’s contractors or sub-lessee, or their respective agency and employees, (b) by any condition of the property, (c) by any failure of Lessee , it’s contractors or sub-lessee, or their respective agents and employees, to comply with any applicable law, rule, regulation or order of any governmental authority, or to comply with any provision of this Lease, or (d) by any other cause related to Lessee’s performance hereunder. Lessee at all times hereby fully assumes the risk of and shall defend, indemnify and hold harmless the Lessor, its officers, employees and agents (the Lessor and such persons collectively "Lessor’s Indemnified Persons"), and shall reimburse Lessor’s Indemnified Persons for, from and against each and every demand, claim, suit, loss (which shall include any diminution in value), liability, damage, cost and expense (including, without limitation, interest, fines, penalties, and investigation, and any and all reasonable fees, disbursements and expenses of attorneys, accountants and other professional advisors) (collectively, "Losses") imposed on, incurred by or asserted against Lessor’s Indemnified Persons, (individually or jointly) directly or indirectly, relating to, resulting from, or arising out of Lessee’s work and services, or other activities performed hereunder. These covenants of indemnity shall survive cancellation, termination, or expiration of this Lease, Lessee hereby acknowledges that the allocation of risk set forth in this provision of the Agreement is a part of the consideration to be provided to Lessor by Lessee for performance of this Agreement.

11. Insurance - Lessee shall be required to furnish evidence of having at least the minimum amounts of insurance required under Section 103.6 of the "West Virginia Division of Highways, Standard Specifications, Roads and Bridges, as Adopted 2017," and supplements thereto, and include the West Virginia Division of Highways as an additional insured on all policies of insurance required, except for worker's compensation. Any insurance required to be carried shall be primary, and not excess to any other insurance. Lessee shall require all sub-lessees to furnish evidence of having at least the minimum amounts of insurance required under Section 103.6 of the "West Virginia Division of Highways, Standard Specifications, Roads and Bridges, as Adopted 2017," and supplements thereto, and include West Virginia Division of Highways as an additional insured on all policies of insurance required, except for worker’s compensation. Any insurance required to be carried shall be primary, and not excess to any other insurance.

12. Assignment - This agreement may not be transferred, assigned or sublet, in whole or in part, without prior written approval of Lessor.

13. Possession - Lessee shall have exclusive control and right of possession of the lease area to use, subject to the rights of Lessor reserved herein, and shall have sole responsibility for custody, maintenance, operation and use thereof.

14. Nondiscrimination - Lessee, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person, on the grounds of race, religion, color, sex, national origin, or disability shall be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination in the use of the lease area or facilities thereof; (2) that in connection with the construction of any improvements on said lands and the furnishing of services thereon, no discrimination shall be practiced in the selection and retention of first-tier subcontractors, and by first-tier subcontractors in the selection and retention of second-tier subcontractors; (3) that such discrimination shall not be practiced against the public in accommodations constructed or operated within the area of said lease; and (4) that Lessee shall use Leased Property in compliance with all other requirements imposed by the Department of Transportation pursuant to Title 49, Code of Federal Regulations, Part 21, and as said regulations may be amended. That, in the event of breach of any of the above nondiscrimination covenants, if Lessor has given the Lessee thirty (30) days written notice of an alleged breach and Lessee has failed either to cure the breach or to take appropriate steps to prevent reoccurrence, Lessor shall have the right to terminate this agreement and to reenter and repossess Leased Property area and hold the same as if said agreement had never been made or issued.

15. Inspection and Maintenance - Lessor reserves to itself the right to enter upon the Leased Property at any time and without notice for purposes of inspection and determination of compliance with the terms hereof, and for any necessary maintenance, repair, construction or reconstruction of its adjacent highway facilities. Lessor, in the conducting of such maintenance, repair, construction or reconstruction, shall have, to the extent reasonably necessary, the right to cause the interruption or suspension of Lessee's operations on said property and may damage or alter the Lessee's improvements thereon, with no liability to the Lessor.

16. Termination - Lessor reserves the right to terminate this agreement at any time and for any reason or for no reason without liability to Lessee by giving Lessee a written notice of termination thirty (30) days before the effective date of the termination.

17. Surrender of Leased Premises – At the termination or expiration of this Lease, Lessee shall surrender Leased Premises to Lessor in as good a condition as when received by Lessee. Lessee shall also remove all Lessee's fixtures, furnishings and equipment and repair any damage to Leased Premises occasioned by Lessee's use.

18. Entire Agreement – This Lease constitutes the entire understanding and agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties.

19. Time - Time is of the essence in the performance of this Lease.

20. Governing Law - This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia, without regard to its choice of law principles.

21. Amendment and Waivers - Any term or provision of this Lease may be amended, and the observance of any term of this Lease may be waived, only by a writing signed by the party to be bound. The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of any party to enforce any of the provisions hereof

shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions.

22. Receipt of Lease Payment - The initial lease payment provided by Section 6 herein was received on or about _____.

[Signature Page Follows]

LESSOR:

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS

By: _____
Jimmy Wriston, P.E.
SECRETARY OF TRANSPORTATION/ COMMISSIONER OF HIGHWAYS

LESSEE:

THE CITY OF ELKINS, West Virginia, a corporation

By:_____

Its:_____

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO-WIT:

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Jimmy Wriston, P.E., Secretary of Transportation/ Commissioner of Highways.

My commission expires: _____

_____
NOTARY PUBLIC

STATE OF WEST VIRGINIA;

COUNTY OF _____, TO-WIT:

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____, on behalf of _____, a _____.

My commission expires: _____

_____
NOTARY PUBLIC

This instrument was prepared by:
Right of Way Division
West Virginia Department of Transportation,
Division of Highways
Building Five, Room A-618; 1900 Kanawha Blvd., E.
Charleston, West Virginia 26305-0430

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	September 21, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1689: Authorizing the city clerk and city attorney to initiate the process for a change to the Elkins City Charter under West Virginia Code §8-4-8
Recommended By:	This item was requested by the mayor. It has been reviewed by the Rules & Ordinances Committee.
Summary:	The mayor requests amending the city charter to eliminate a prohibition against Elkins mayors holding any other elected office. See attached memo for an explanation of the mayor's request and the process for amending a city's charter by ordinance as stipulated by WV Code Section 8-4-8. See also attached presentation slides showing, on the final slide, proposed dates for steps in the process. Adopting this resolution merely authorizes city staff to follow the steps laid out in Section 8-4-8 so that an ordinance may be laid before council after a public hearing on November 2 (at the earliest). The ordinance amending the charter would receive the usual two readings, among other requirements (including the removal of any qualified objections).
Fiscal Impact:	None.
Recommendation:	Approve the resolution to authorize initiating the process stipulated in WV Code Section 8-4-8.
Attachments:	1. Memo - charter change process mayoral officeholding - 2023_09_19 2. Charter Changes - mayoral officeholding_council presentation 2023_09_19 3. R-1689 - authorizing initiation of charter change by ordinance

Memo

To: Elkins Common Council

From: Sutton Stokes, Elkins City Clerk

Date: September 19, 2023

Re: Charter change process

The mayor proposes changing the city charter to eliminate the prohibition against Elkins mayors holding more than one elected public office, as shown below.

> SECTION 3.04. PUBLIC ETHICS AND PROHIBITIONS.
>
> (b) Holding Other Office. During term of office, the Mayor shall hold no other elected public office nor be employed by the City in any other capacity.

The process for changing the city charter is laid out in West Virginia Code 8-4-8, as follows.

- Council proposes amendment(s) by **enacting an ordinance**; Announces by Class II ad the proposed amendments and public hearing. A Class II ad requires two publications, at least one week apart. Ordinance would receive the usual two readings, also at least one week apart.
- Council conducts public hearing (30 days after first ad publication) and hears public input/objections. “Qualified objections” must be resolved within ten days after this hearing, or the charter changes under consideration cannot be made by enacting an ordinance.
- If no qualified objections are received, or if objection is resolved within ten days following the public hearing, Council may **adopt by ordinance** those charter amendments not subject to objection.
- If qualified objections remain ten days following the public hearing, Council may order the proposed amendment(s) be put to voters at the next regular municipal election or at a special election. This is not advised in the current situation.

If council cancels its first meeting in October, per custom during the Mountain State Forest Festival, and given the timeline requirements above, the earliest this ordinance could be approved on second and final reading would be at council’s regular meeting of November 16.

##

THE CITY OF
ELKINS
WEST VIRGINIA

AmendingElkins City Charter
Mayoral Officeholding

Mayor's Request

The Elkins City Charter, Section 3.0, states:

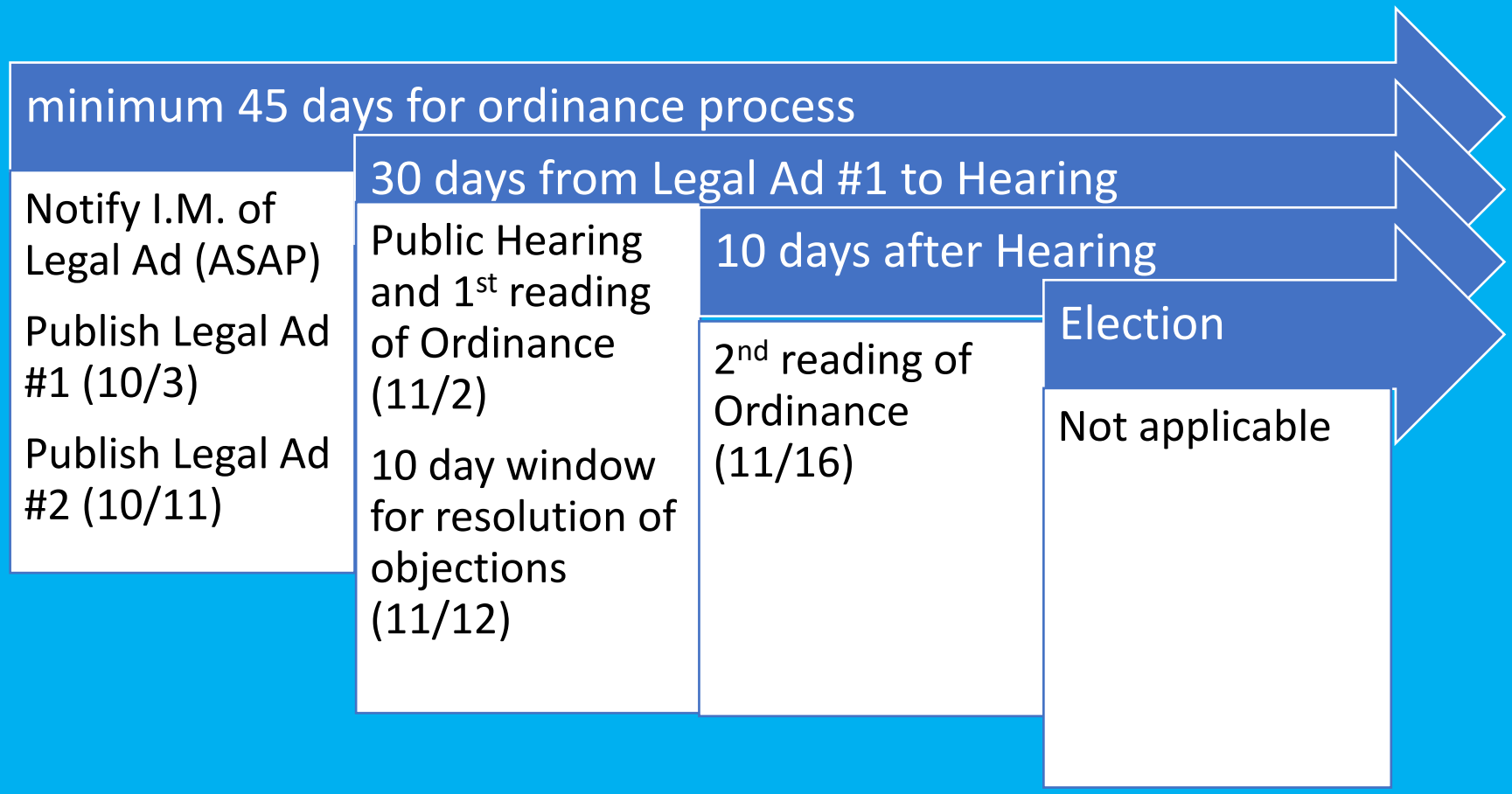
> *Holding Other Office: During term of office, the Mayor shall hold no other elected public office nor be employed by the City in any other capacity.*

The mayor proposes that council follow the process in West Virginia Code §8-4-8 to amend the Elkins City Charter by striking the prohibition against Elkins mayors holding "other elected office."

Amending Process (*W.Va. Code 8-4-8*)

- Council proposes amendment(s) by **enacting ordinance**; Announces by Class II ad the proposed amendments and public hearing.
- Council conducts public hearing 30 days after first advertisement publication and hears public input/objections.
- If qualified objections remain ten days following the public hearing, Council may order the proposed amendment(s) be put to voters at the next regular municipal election or at a special election.
- If no qualified objections are received, or if objection is resolved within ten days following the public hearing, Council may **adopt by ordinance** those charter amendments not subject to objection.

Amending Process Timeline



IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1689)
September 21, 2023

Authorizing Initiation of Process to Amend the City Charter by Ordinance

---

WHEREAS, the City Charter ("Charter") of the City of Elkins, West Virginia ("City"), as most recently amended in 2020 and 2021, contains the following provision:

> SECTION 3.04. PUBLIC ETHICS AND PROHIBITIONS.
> (b) Holding Other Office. During term of office, the Mayor shall hold no other elected public office nor be employed by the City in any other capacity.

; and

WHEREAS, the Mayor currently in office has requested that the Elkins Common Council, the City's governing body, consider amending the Charter to eliminate the prohibition against the Elkins Mayor holding any other elected office; and

WHEREAS, West Virginia Code § 8-4-8 provides that whenever the governing body of a municipality shall deem it expedient to amend the charter of the City, it shall propose the amendment by ordinance; and

WHEREAS, West Virginia Code § 8-4-8 stipulates a process that must be followed before an ordinance amending a municipality's charter may be laid before that municipality's governing body, including public notice provided via Class II Legal Advertisement and a public hearing no sooner than 30 days after the first publication date of the Legal Advertisement;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby authorizes the City Attorney and City Clerk to follow the process stipulated by West Virginia Code § 8-4-8 so that an ordinance amending the Elkins City Charter as described above may be laid before and considered by the Elkins Common Council.

_____
Jerry A. Marco, Mayor

Attest:

_____
Sutton R. Stokes, City Clerk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	September 21, 2023
Section:	New business
Category:	Action Item
Agenda Item Name:	ABCA floorplan extension endorsement for El Gran Sabor during Mountain State Forest Festival
Recommended By:	Clerk
Summary:	El Gran Sabor requests endorsement of its "nonintoxicating beer floor plan extension" to sell beer in a fenced area on Kerens Avenue on the evenings of October 6 and 7, during the Mountain State Forest Festival. This application requires endorsement by council. Per West Virginia Code §11-16-3: "Nonintoxicating beer floor plan extension" means a temporary one-day extension of an existing Class A licensee's floor plan to a contiguous, adjoining, and bounded area, such as a parking lot or outdoor area, which shall for the temporary period encompass the licensee's licensed premises; further the license shall be endorsed or approved by the county or municipality where the license is located; the license shall be in good standing with the commissioner, and further the temporary event shall cease on or before midnight of the approved temporary one-day event.
Fiscal Impact:	None.
Recommendation:	Authorize city clerk to sign endorsement letter.
Attachments:	1. MSFF_ABC app_El Gran 2023_request

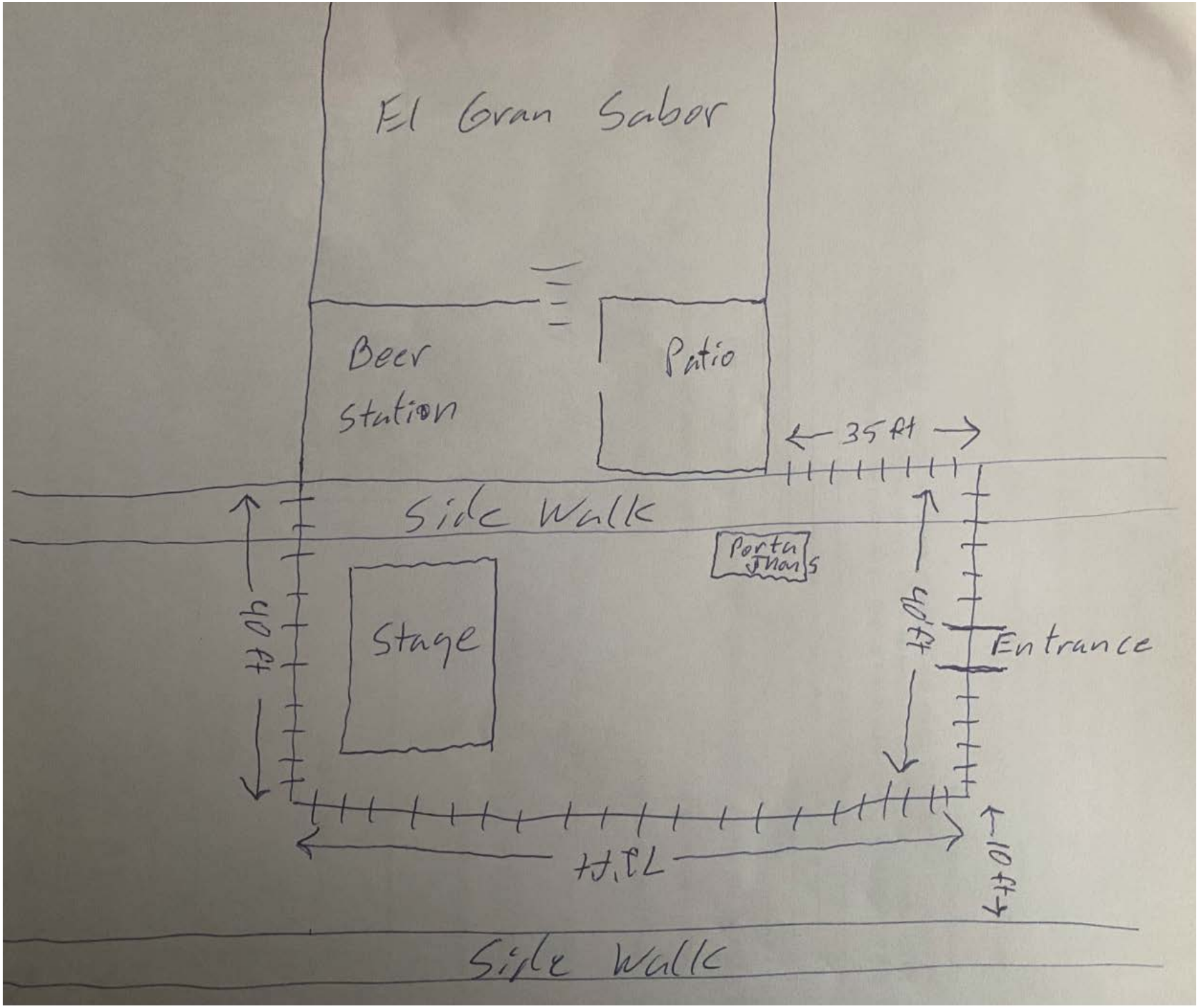
Robert Masten
El Gran Sabor
413 Kerens Ave
Elkins WV, 26241
cell # (304) 614-8840

To Whom It May Concern,

El Gran Sabor (Robert D. Masten LLC) is applying for a Floor Plan Extension for 10/6 & 10/7/23 for the Forest Festival Block Party. We will be extending our patio area of El Gran Sabor. We will have a temporary fence set up in the front of the restaurant. We will be adding two additional door persons checking ID and making sure no one leaves the designated area with a beverage. We will also be fully staffed with waiters/ waitresses, bartenders, and managers.

Sincerely,

Robert Masten
El Gran Sabor


El Gran Sabor
Beer Station
Patio
35 ft
Side Walk
Porta Johns
40 ft
Stage
40 ft
Entrance
73 ft
10 ft
Side Walk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	September 21, 2023
Section:	New business
Category:	Action Item
Agenda Item Name:	ABCA floorplan extension for Big Timber during Mountain State Forest Festival
Recommended By:	City Clerk
Summary:	Big Timber Brewing requests endorsement of its "nonintoxicating beer floor plan extension" to sell beer in the parking lot of its new brewery/restaurant location on Davis Avenue 9am-11:45 p.m. on October 7, during the Mountain State Forest Festival's Grand Feature Parade. This application requires endorsement by council. Per West Virginia Code §11-16-3: "Nonintoxicating beer floor plan extension" means a temporary one-day extension of an existing Class A licensee's floor plan to a contiguous, adjoining, and bounded area, such as a parking lot or outdoor area, which shall for the temporary period encompass the licensee's licensed premises; further the license shall be endorsed or approved by the county or municipality where the license is located; the license shall be in good standing with the commissioner, and further the temporary event shall cease on or before midnight of the approved temporary one-day event.
Fiscal Impact:	None.
Recommendation:	Authorize the city clerk to sign a letter endorsing this application.
Attachments:	1. MSFF_ABC_app_Big Timber 2023 floor plan extension request

ABCA-192 FP.EXT. (April 26, 2019)

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

NONINTOXICATING FLOOR PLAN EXTENSION ON-PREMISES

County: RANDOLPH WVABCA License Number: A2-A-004-015310

☑ 1 # of days for Nonintoxicating Floor Plan Extension * Fee: $50.00 per Day	☑ Dates and Times 10/7 (date) Start 9 AM End 11:45 PM (times) ____(date) Start____ End____(times) ____(date) Start____ End____(times) ____(date) Start____ End____(times) ____(date) Start____ End____(times) ____(date) Start____ End____(times) ____(date) Start____ End____(times)

Name of Establishment (DBA): BIG TIMBER BREWING

Phone No: 304.614.6288 Licensee's or Managers Name: MATT KWASNIEWSKI

(1) Name of Event: FOREST FESTIVAL PARADE PARTY

(2) Distance to nearest residence: 380' Distance to nearest church: 490'

Distance to nearest school: 740' Distance to nearest government building: 1475'

(3) Please provide details and information regarding the event (purpose, entertainment, etc.)
PARADE WATCH PARTY WITH LIVE MUSIC

(4) List complete information in the form of a diagram (on the second page), giving measured dimensions of the proposed area for the extension and a description of how the area is to be designated as a containment area (fenced or bound area) for patrons of the establishment. Please provide detailed information regarding the designated area and connection to the currently licensed premises.

(5) County and Municipal Endorsement/Consent:

Licensees must obtain a letter of endorsement on official letterhead for the "Nonintoxicating Floor Plan Extension" from the following:

a) If held outside of a municipality, the letter must come from the County Commission.

b) If held within a municipality the letter must be signed by the Mayor, City Manager or Mayor's designee.

Letters must accompany the application.

(6) Please provide details concerning security and additional staff within the "Nonintoxicating Floor Plan Extension" area:

EVENT FENCING AND RIBBON WITH DOOR PERSON CHECKING IDS

Floor plan extension **must** show the exact area and measurements of the "Nonintoxicating Floor Plan Extension" area in relationship to the licensed establishment. The area must be contiguous, adjoining and bounded area, such as a parking lot or outdoor area, which shall for the temporary period encompass the licensee's licensed premises.

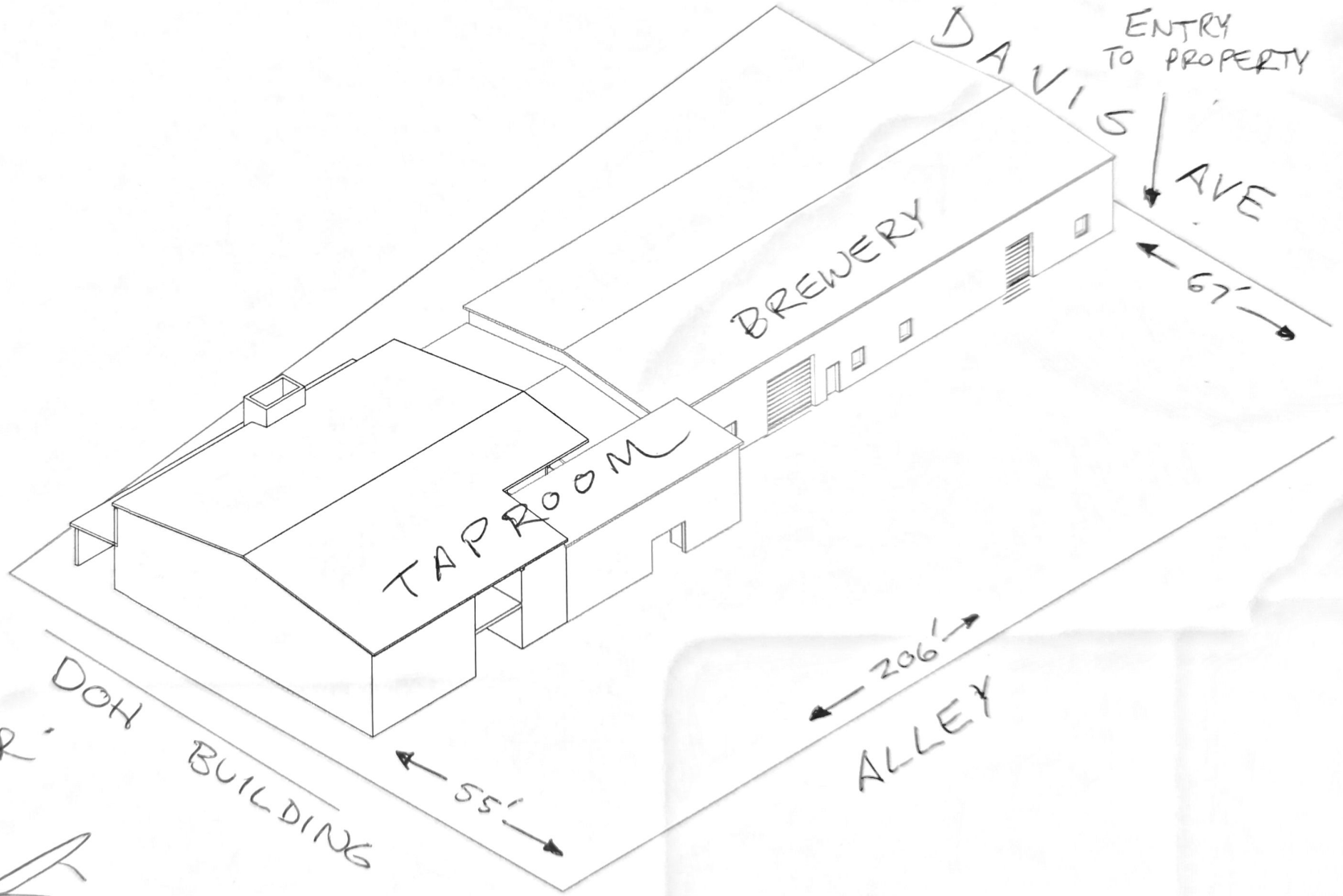
Keep one (1) copy at the licensed premises. (Provide Dimensions)

PLEASE SEE ATTACHED

I, MATT KWASNIEWSKI (Print), have received and read the requirements and attest to the fact that all preceding information is true and accurate and that all individuals and/or controlling members listed on the license are aware of the submission of an application for a "Nonintoxicating Floor Plan Extension" license.

Licensee's Signature: [signature] Date: 9/19/23

Title: PRESIDENT



BIG TIMBR BREWING

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	September 21, 2023
Section:	New business
Category:	Action Item
Agenda Item Name:	Proposal to cancel October 5 council meeting due to the Mountain State Forest Festival
Recommended By:	City Clerk
Summary:	Due to schedule conflicts and traffic issues related to the Mountain State Forest Festival, council has traditionally canceled its first regular meeting of October each year.
Fiscal Impact:	Reduced overtime for staff who support meetings.
Recommendation:	Cancel council's regular meeting of October 5.
Attachments:	None