



City of Elkins

Regular Council Meeting

January 19, 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. **Agenda adjustments**
 - a. Building Permits
 - b. Approved minutes of committee, board and commission meetings
 - c. Elkins Fire Department annual report
 - d. Treasurer's report
 - e. *Resolution 1602: Approving Promotion of and Confirming Compensation Levels for members of the Elkins Fire Department*
 - f. *Resolution 1603: Approving "Full-Time Regular Employee" Status and Confirming Compensation Level for C. Hitt*
 - g. *Resolution 1604: Approving "Full-Time Regular Employee" Status and Confirming Compensation Level for D. Khol*
 - h. *Resolution 1605: Authorizing the Appointment of I. Allen to the Elkins Tree Board*
 - i. *Resolution 1606: General Fund Budget Revisions No. 1 through 3 for FY23*
 - j. *Resolution 1607: Fire Fund Budget Revision No. 1 for FY23*
 - k. *Resolution 1608: Approval of Budget Revision 2023-001-02 for Fiscal Year 2023*
 - l. *Resolution 1609: Approving the Transfer of Funds from the Financial Stabilization Account*
 - m. *Resolution 1610: Approving Changes in Health Insurance Policy Costs for Fiscal Year 2024*
 - n. *Resolution 1611: Authorizing Revision of Job Descriptions within Operations Department*
 - o. *Resolution 1612: Creation of Property Maintenance Code Official Position within the Operations Department, including Amendments to the City of Elkins Organizational Chart and Assignment to the Compensation and Classification Plan*
 - p. *Resolution 1613: Appointment of C. Griggs to Unexpired Third Ward Council Seat*
4. **Public comment**
5. **Minutes**

- a. Minutes proposed for the council public hearing of January 5, 2023.
- b. Minutes proposed for the regular council meeting of January 5, 2023.

6. Correspondence and Notifications

- a. Building Permits
- b. Approved minutes of committee, board and commission meetings

7. Presentation

- a. Laura Ward - Country Roads Transit/Senior Center

8. Committee Reports

9. Staff reports

- a. Elkins Fire Department annual report
- b. Treasurer's report

10. 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:

- 1. AP check report for the period of January 2 - 13, 2023

11. Unfinished business

- a. Ordinance 309: An Ordinance of the Common Council of the City of Elkins, West Virginia, Renewing Franchise Agreement with Cequel III Communications II, LLC DBA Optimum (2nd and final reading)

12. New business

- a. Ordinance 310: An Ordinance of the Common Council of the City of Elkins, West Virginia To Amend and Revise Chapter 35: Elections (2nd and final reading)
- b. *Resolution 1602*: Approving Promotion of and Confirming Compensation Levels for members of the Elkins Fire Department
- c. *Resolution 1603*: Approving "Full-Time Regular Employee" Status and Confirming Compensation Level for C. Hitt
- d. *Resolution 1604*: Approving "Full-Time Regular Employee" Status and Confirming Compensation Level for D. Khol
- e. *Resolution 1605*: Authorizing the Appointment of I. Allen to the Elkins Tree Board
- f. *Resolution 1606*: General Fund Budget Revisions No. 1 through 3 for FY23
- g. *Resolution 1607*: Fire Fund Budget Revision No. 1 for FY23
- h. *Resolution 1608*: Approval of Budget Revision 2023-001-02 for Fiscal Year 2023
- i. *Resolution 1609*: Approving the Transfer of Funds from the Financial Stabilization Account
- j. *Resolution 1610*: Approving Changes in Health Insurance Policy Costs for Fiscal Year 2024
- k. *Resolution 1611*: Authorizing Revision of Job Descriptions within Operations Department

- I. *Resolution 1612*: Creation of Property Maintenance Code Official Position within the Operations Department, including Amendments to the City of Elkins Organizational Chart and Assignment to the Compensation and Classification Plan
- m. *Resolution 1613*: Appointment of C. Griggs to Unexpired Third Ward Council Seat

13. Mayor's comments

14. Adjournment

Proposed Minutes

ELKINS COMMON COUNCIL PUBLIC HEARING MINUTES

401 Davis Avenue

Council Chamber, 2nd Floor

January 5, 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, R.C. Chenoweth, M. D. Cuonzo, J.A. Guye, D.C. Parker, and L.S. Severino; Fire Chief S.D. Himes; Police Chief T. Bennett; Interim Operations Manager M. Himes; City Attorney G. S. Roberts; and City Clerk J.R. Sutton (acting as recording secretary).

Councilpersons G.M. Hinchman, C.C. Lowther and L.H. Vest and City Treasurer T. Judy were absent.

The mayor called the hearing to order at 7:00 p.m.

- a. Application regarding creation of the City of Elkins Redevelopment District No. 1 and approval of Project Plan No. 1 and issuance of Tax Increment Financing Obligations

Richard McClane, resident of 185 High Street, read and provided a copy of a written statement which is attached as a copy of this record.

Craig Fortney, spoke as a representative of the Holiday Inn Express, located at 50 Martin Street. Mr. Fortney reportedly worked at the WV Auditor's Office and understands how tricky TIF's can be and has seen good and bad executions of them. Mr. Fortney would like to encourage the city to use TIF revenues to stimulate the hot spots, specifically the Railyard, identified by John Robert Smith.

Llamar Weese, owner of Holiday Inn Express, located at 50 Martin Street, is in favor the TIF if used correctly. Dr. Weese believes Elkins is a beautiful gateway that can be improved by planting the seeds of development in the Railyard. The RCDA Event Center is a good first step, but the TIF money can be used as fertilizer to nurture and grow this garden we have. We need to be prepared for the completion of the 5-Lane and draw tourists downtown. Dr. Weese wants to see the city plan and use this money for ancillary things to support the growth of the railyard.

The mayor closed the hearing at 7:11 p.m.

*Approved by council at the meeting
of MONTH DAY, YEAR*

Proposed Minutes

Jerry A. Marco, Mayor

Attest:

Jessica R. Sutton, City Clerk

1/5/2023, Thursday, 7PM City Council Comments on TIF #1
Richard McClane, 185 High Street

My name is Richard McClane and I live on High Street in Elkins. I spent my early childhood in Parsons where my father was a Presbyterian minister. Later as a young man, I met a woman out west who had grown up in Elkins and we got married, started a family and later we bought our house on High Street and have lived here since 1999. I have seen many changes in Elkins over the years. My comments regarding the proposed TIF District and the Project Plans are both positive and negative.

My feelings about this topic are mostly positive. Much of the proposed plan is based on the recommendations of Smart Growth America¹. I attended their public meeting and part of the workshop held in here in October. The gist of the SGA presentation was that Elkins should try to attract people from the “millennial” generation (people born between 1981 and 1996), because these people would bring a more dynamic growth to Elkins². The millennial generation has a knowledge economy in contrast to the earlier agriculture and industrial types³. According to the experts at SGA, millennials are looking for cities and towns to go to and live in which are clean and beautiful and offer the ability to walk or use a bike easily to get to what SGA calls “fiscal hotspots” or clusters that generate revenue, in other words, a thriving destination for residents and tourists alike. Many of the TIF projects focus on these things (such as bike trails, walking trails, riverfront and railyard development, etc.). I agree that this is the direction Elkins should take for a sustainable future.

My negative feeling about the TIF proposal is that there is no mention of protecting the most valuable resource we have in Elkins and Randolph County which is our remarkable natural setting. The city proposes to develop capital improvements including the design, permitting, acquisition, construction and equipping of site infrastructure and gives a long detailed list of examples. However, there is nothing in the proposal that ensures the environmental integrity of this area. The proposed three hundred acre TIF district will include the present

¹ a nonprofit 501 organization headquartered in Washington DC

² Millennials were born into a technological world and came of age in a new millennium. They also were old enough to experience and comprehend 9/11. This generation has witnessed technological growth and development. As a result, they are considered more progressive, creative and far-thinking than earlier generations. (thanks Google)

³ Many researchers have examined the millennials' attitudes and opinions across a spectrum of issues. Most show evidence of a generation that is highly educated, self-confident, technologically savvy and ambitious. (thanks Google)

Industrial Zone and actually expand that entity into the flood control area out to the Tygart River in the west. The RCDA has mismanaged the current Industrial Zone by not continually monitoring air, water and noise emissions coming from their current site. The TIF Proposal **should not be approved** until a written plan is included to monitor (with current best practices technology) the expanded Industrial Zone twenty-four hours a day and seven days a week to ensure it meets state emission standards. The RCDA seems to feel we can have industry or a clean environment....but not both. This is a false choice. We can have both....and we must have both if we want to attract a younger more vibrant work force. Furthermore, expanding the present Industrial Zone is really a bad investment. It seems to violate the principles of smart growth, that is, low-density development equals low return-on-investment which is just bad business.

In conclusion, the goal is to develop a future Elkins where people will love living here and visitors will want to live here. With smart planning, we can have a balance of industrial jobs without ruining the traditional character of Elkins and especially its beautiful natural environment. In fact, the authentic character of our town combined with the beautiful Randolph County setting will be an increasingly rare and important resource itself.

Proposed Minutes

ELKINS COMMON COUNCIL REGULAR COUNCIL MEETING MINUTES

***401 Davis Avenue
Council Chamber, 2nd Floor
January 5, 2023
7:12 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, R.C. Chenoweth, M. D. Cuonzo, J.A. Guye, D.C. Parker, and L.S. Severino; Fire Chief S.D. Himes; Police Chief T. Bennett; Interim Operations Manager M. Himes; City Attorney G. S. Roberts; and City Clerk J.R. Sutton (acting as recording secretary).

Councilpersons G.M. Hinchman, C.C. Lowther and L.H. Vest and City Treasurer T. Judy were absent.

MINUTES

Cm. Chenoweth, **MOVED APPROVAL OF THE MINUTES OF THE DECEMBER 15, 2022, MEETING.**
The motion carried.

CORRESPONDENCE AND NOTIFICATIONS

Council received the following correspondence and notifications:

- Issued building permits
- Events
- Approved minutes of committee, board and commission meetings

The following building permits have been issued since the previous regular council meeting.

ISSUED BUILDING PERMITS				
Permit	Applicant	Location	Description	Value
220292	Davis Trust Co.	227 Davis Ave	Repair Siding	14,685.00
220293	Busch, Zurbuch & Thompson, PLLC	26 1/2 High St	Replace Roof Shingles	6,282.00
220294	Louk, Robert	220 Central St.	Replace Roof Shingles	3,811.00
220295	Sabatino, Joseph & Alice	405 Kerens Ave.	Replace Roof Shingles	13,546.00
220296	Holland Investment Group	326 S Randolph Ave	New Windows and Porch	3,500.00

Proposed Minutes

ISSUED BUILDING PERMITS				
Permit	Applicant	Location	Description	Value
220297	Hardy Cellular Telephone Co	10 Eleventh St.	Up-Grade Cell Tower	20,000.00
220298	Simon, Michael & Allicen	1801 Livingston Ave	Storage Building	1,500.00

COMMITTEE REPORTS provided by all committee chairs present.

STAFF REPORTS were provided by all administrative officers present.

APPROVAL OF VENDOR INVOICE PAYMENTS

Cm. Chenoweth **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 December 12 – 30, 2022.

UNFINISHED BUSINESS

Mayor Marco advised council that no additional information has been received on Ordinance 309 and therefore no action will be taken.

NEW BUSINESS

Cm. Chenoweth, **MOVED APPROVAL OF ORDINANCE 310: AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKINS, WEST VIRGINIA TO AMEND AND REVISE CHAPTER 35: ELECTIONS (1ST OF TWO READINGS).** The motion carried.

Cw. Cuonzo, **MOVED APPROVAL OF RESOLUTION 1596: APPROVING THE PROMOTION OF AND ESTABLISHING A NEW COMPENSATION LEVEL FOR K. SHIFFLETT.** The motion carried.

Cw. Cuonzo, **MOVED APPROVAL OF RESOLUTION 1597: ACCEPTING CONDITIONS OF AGREEMENT WITH PIPER SANDLER FOR THE POTENTIAL ISSUANCE OF TAX INCREMENT FINANCING BONDS.** The motion carried.

Cw. Bross-Fregonara, **MOVED APPROVAL OF RESOLUTION 1598: TO CONSIDER AND ACT UPON A PROPOSED RESOLUTION REGARDING APPROVAL OF (i) THE TAX INCREMENT FINANCING APPLICATION SUBMITTED BY THE CITY OF ELKINS (THE "TIF APPLICATION") WITH RESPECT TO THE PROPOSED CREATION OF A NEW TAX INCREMENT FINANCING DISTRICT IN THE CITY OF ELKINS TO BE CALLED "THE CITY OF ELKINS REDEVELOPMENT DISTRICT No. 1" (THE "TIF DISTRICT") AND PUBLIC INFRASTRUCTURE PROJECTS AND IMPROVEMENTS WITHIN THE TIF DISTRICT; (ii) SUBMISSION OF THE TIF APPLICATION TO THE WEST VIRGINIA**

Proposed Minutes

DEPARTMENT OF ECONOMIC DEVELOPMENT; AND (III) APPROVAL OF OTHER ITEMS IN CONNECTION THEREWITH. The motion carried.

Cw. Cuonzo, MOVED APPROVAL OF RESOLUTION 1599: ACCEPTING CONDITIONS OF LEASE BETWEEN THE TENANTS OF THE DARDEN HOUSE AND THE CITY OF ELKINS, AND AUTHORIZING EXECUTION OF AGREEMENTS. The motion carried.

Cw. Cuonzo, MOVED APPROVAL OF RESOLUTION 1600: APPROVING RENTAL USE AND PROCEDURES FOR DARDEN COMPLEX. In accordance with Resolution 924 and the amended City of Elkins Rules of Council the chair called for a roll call vote. The clerk called roll in random order. The motion carried. Council votes were as follows:

N. Bross-Fregonara	Yes	(vacant)	n/a	L. Severino	Yes
R. Chenoweth	Yes	M. Hinchman	Absent	L. Vest	Absent
M. Cuonzo	Yes	C. Lowther	Absent	Mayor J. Marco (in case of tie)	n/a
J. Guye	No	D. Parker	Yes		

Cm. Chenoweth, MOVED APPROVAL OF RESOLUTION 1601: APPROVING CITY OF ELKINS PARTICIPATION IN THE WV DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS NON STATE OWNED BRIDGE PROGRAM. The motion carried.

MAYOR'S COMMENTS were provided.

Cm. Chenoweth, MOVED ADJOURNMENT. The motion carried.

The meeting adjourned at 8:09 p.m.

*Approved by council at the meeting
of MONTH DAY, YEAR*

Jerry A. Marco, Mayor

Attest:

Jessica R. Sutton, City Clerk

PUBLIC SAFETY COMMITTEE REGULAR MEETING MINUTES

***401 Davis Avenue
City Hall, Council Chambers
December 12, 2022
10:00 a.m.***

Present were Committee Members: D. Parker, chair, L. Severino and J. Guye

Also present were: Mayor J. Marco; Interim Operations Manager M. Himes; Police Chief T. Bennett; Fire Chief S. Himes; Treasurer T. Judy; City Attorney G. Roberts; Code Enforcement Officer P. Isner; and External Affairs Specialist S. Stokes (acting as recording secretary).

City Clerk J. Sutton was absent

MINUTES

Cw. Guye, **MOVED APPROVAL OF THE MINUTES OF THE NOVEMBER 14, 2022, MEETING.** The motion carried.

REPORTS

Police – Chief Bennett advised that the body worn cameras have arrived and will be set up soon with the help of a company representative.

Fire – Chief Himes reported call statistics and the health of departmental personnel. Also, the list of candidates for the rank of lieutenant will be certified soon.

Code Enforcement – November statistics were distributed.

Mayor's Task Force – D. Parker reported that they continue to try to establish local clinic support for people seeking recovery from substance abuse disorder.

NEW BUSINESS

Prioritization of dilapidated properties:

The committee reached consensus that formal prioritization is not a good use of time and abandoned the exercise in favor of discussing next steps on several properties.

Code Enforcement reported that someone named Greg Sanders has a verbal agreement to purchase the house at 421 Center Street, and Big Timber is close to purchasing 17 Davis Avenue (old Lexi's). The committee agreed to add 326 S. Randolph to the list, and Phil was instructed to work with Gerry to write a letter to its owner advising that certain code violations must be addressed (remove porches; secure property against unauthorized

entry) before any work can proceed/building permit be issued. Gerry/Phil will also reach out to owners of 202 North Randolph and 109 Knapp Street to seek permission for the city to enter properties to evaluate/abate asbestos, etc. and to explore whether they would be willing to deed to the city. Gerry/Phil will report on these efforts at the January 9 meeting.

The property listed as 117 Davis Street on the list is misaddressed and should be identified as 201 Davis Street.

The mayor advised that COE has been told to apply for a second round of this funding.

Appointment of fire/police chiefs:

The committee requested that the Personnel Committee consider developing a policy implementing regular performance reviews and salary renegotiations for administrative officers not appointed to terms (i.e., fire/police chiefs and operations manager) with similar frequency to the review/renegotiation afforded to administrative officers appointed to terms (i.e., clerk, treasurer).

Cm. Parker, **MOVED ADJOURNMENT.** The motion carried.

The meeting adjourned at 10:55 a.m.

The foregoing minutes were approved at the meeting of Jan. 9, 2023

David C. Parker
Name & Title
Chair

Michael G. [Signature]
Signature

RULES AND ORDINANCE COMMITTEE REGULAR MEETING MINUTES

***401 Davis Avenue
City Hall, Council Chambers
December 14, 2022
9:00 a.m.***

Present were Committee Members: N. Bross-Fregonara and M. Cuonzo

Also present were: Mayor J. Marco; Interim Operations Manager M. Himes; City Clerk J. Sutton; Police Chief T. Bennett; Treasurer T. Judy; and City Attorney G. Roberts

MINUTES

Cw. Cuonzo, **MOVED APPROVAL OF THE MINUTES OF THE NOVEMBER 9, 2022, MEETING.** The motion carried.

By unanimous consent new business was discussed prior to the unfinished business.

NEW BUSINESS

City Clerk J. Sutton proposed changes to City Code Section 35: Elections to eliminate contradiction with W.Va. State Code and the updated City Charter.

Cw. Cuonzo, **MOVED APPROVAL OF A RECOMMENDATION TO COUNCIL TO ADOPT ALL PROPOSED CHANGES TO CITY CODE SECTION 35.** The motion carried.

UNFINISHED BUSINESS

Discussion continued on City Code Section 90: Animals. Consensus at the end of the discussion was that the revised code should include a policy statement regarding the role of council and their intent, a section addressing domesticated animals, a section addressing non-domesticated animals, and a section identifying penalties for violation of the code. The committee is also interested in the idea of an animal commission similar to what Buckhannon has created. The City Attorney will draft the new legislation for review at the next meeting.

ANNOUNCEMENTS

The next regular committee meeting is January 11, 2023 at 9:00 a.m.

Cw. Bross-Fregonara, **MOVED ADJOURNMENT.** The motion carried.

The meeting adjourned at 10:37 a.m.

The foregoing minutes were approved at the meeting of Jan 11, 2023

Nanci Bross-Fregonara, Chair
Name & Title

Nanci Bross-Fregonara
Signature

ELKINS TREE BOARD

MEETING MINUTES

Darden House, Davis Ave.

November 29, 2022 • 5:30 p.m.

Present: Marilyn Cuonzo, Chair; Nanci Bross-Fregonara, Secretary; Linda Burke, Vice Chair; Linda Silva, Treasurer; and members Angela Daniels, and Aira Burkhart. Sam Golston was absent.

PUBLIC COMMENT

No public comment.

MINUTES

BURKHART MOVED APPROVAL OF THE MINUTES OF THE OCTOBER 11 AND NOVEMBER 1, 2022, MEETINGS. MOTION CARRIED.

BUDGET REPORT

Silva reported the current ETB budget balance is: \$3,813.58. Items approved for purchase include scissors (\$60) and hand saw (\$150). Cuonzo will investigate the purchase of hawthorns.

UNFINISHED BUSINESS

PROPOSE ADDITIONAL BOARD MEMBER: Cuonzo had not heard back from the Florida guest who expressed interest in serving. She will reach out to him again. It was also suggested that a member of FOT serve as FOT liaison rather than a board member. Election of new slate of officers will be the first meeting in January as legislated in our ordinance. Among the proposed list, Angela Daniels, secretary; Aira Burkhart, president.

DOF GRANT: Cuonzo will reach out to Dave Mitchell and Shawn (COE Street Department) to get details for the last tree replacements downtown. Bross-Fregonara will then submit the grant. She will also prepare the Tree City application.

NEW BUSINESS

ANNOUNCEMENTS

The next regular meeting of the Tree Board is set for **Tuesday, January 3 at 5:30 p.m.**

The meeting was adjourned at 6:20 p.m. Decorating the Darden House followed.

The foregoing minutes were approved at the meeting of January 3, 2023.

Marilyn Cuonzo, Chair
Name & Title

[Signature]
Signature

AD-HOC ORGANIZATION AUDIT COMMITTEE MEETING MINUTES

***401 Davis Avenue
City Hall, Council Chambers
October 12, 2022
2:30 p.m.***

Present were Committee Members: L. Vest, Chair; M. Hinchman; D. Parker; and J. Marco

Also present were: Interim Operations Manager M. Himes; Police Chief T. Bennett; Fire Chief S. Himes; Treasurer T. Judy; Attorney G. Roberts; Code Enforcement Officer P. Isner; Chief Water Operator W. Lambert; and R. Wickham (acting as recording secretary).

MINUTES

Cm. Parker, **MOVED APPROVAL OF THE MINUTES OF THE JULY 19, 2022, MEETING.** The motion carried.

OLD BUSINESS

Committee members reviewed provided job descriptions for Property Maintenance Code Official, Building Code Office, and Floodplain Administrator. The committee discussed the current duties and job description of Code Enforcement Office P. Isner. The committee believes that with the introduction of a new employee under P. Isner, this employee would take over Code Enforcement and rental inspection duties. The committee recommended that M. Himes, P. Isner, and J. Sutton work together to create a job description for the new position based on these recommendations and move forward with posting the position when it is finalized. M. Himes was directed to also work with P. Isner and J. Sutton to update P. Isner's job description to include acting Zoning Office and Floodplain Administrator. This job description will be sent out for review at a future meeting once completed.

NEW BUSINESS

The committee discussed the job description for the Operations Assistant that was provided by M. Himes. Changes to the description were provided to reflect the new organizational chart adopted in November 2021. A suggestion was made to remove duties associated with the water and sanitary department from the Operations Assistant. M. Himes will discuss this with the current water and sanitary department heads and will provide their feedback at a future meeting. The Administrative Assistant job description was not discussed.

ANNOUNCEMENTS

Mayor Marco suggested to the committee that they start looking at departments as a whole in the future to move the process along more quickly. He also recommended that the committee

members set up interviews with supervisors of the departments to get feedback on what they would like to see addressed by the committee.

The regularly scheduled meeting on October 18th @ 1:00p.m. was cancelled. The next meeting will be November 15th @ 1:00p.m.

Mayor J. Marco, **MOVED ADJOURNMENT.** The motion carried.

The meeting adjourned at 3:42 p.m.

The foregoing minutes were approved at the meeting of Jan 17, 2022

Linda H. Vest CHAIRMAN
Name & Title

Linda H. Vest
Signature

ANNUAL REPORT

2022



Introduction from the Fire Chief:

It is with great pleasure and excitement that the Annual Report of the Elkins Fire Department (EFD) is prepared and submitted to you, the common council of the City of Elkins. We are hopeful and confident that the information contained in this document will assist in raising awareness about the Department and serve as a guideline for future planning.

The EFD is an emergency response agency. One would assume that this is a reactionary existence, as if we wait for emergencies to occur prior to action. Instead, the reality is that our career and volunteer membership spend many hours in preparation for these emergency incidents. As a combination fire department, we are fortunate to maintain a Public Protection Classification (PPC) of 3/3x from the Insurance Services Office (ISO). To those who don't understand what that means, it is a contributing factor as to how each home and business's fire insurance rates are determined. In essence, the lower the number, the less the premium. We are hopeful that additional annual reports will be used in comparison with previous years to document trends and support tangible results to measure the Department's effectiveness in the community.

Existing Programs and Services:

Services provided by the EFD can simply be divided into two separate categories: Emergency services and non-emergency services. No additional services have been added during the past year.

Emergency services include the following:

- Structural, Vehicular, and Wildland Fire Suppression
- Vehicle and Machinery Rescue
- Rope Rescue
- Confined Space Rescue
- Hazardous Materials Response
- Trench Rescue
- Water and Dive Rescue and Recovery
- Mutual Aid with surrounding Departments
- Natural and Man-Made Disasters

Non-emergency services include the following:

- Inspection services
- Fire Code compliance and enforcement
- Public Education Programs
- Public Training Programs
- Equipment maintenance, repair, and testing
- Data Collection
- NFIRS Reporting
- Department Training Programs

Resources:

The EFD's resources can also be divided into two categories: equipment and personnel. It takes equipment for firefighters to do their job and one is useless without the other. We respond to no incidents inside the station which makes us dependent on the vehicle fleet to function. The following is a list of vehicles operated by the department. The list is broken down by vehicle number, a description and ownership. There have been no changes to the fleet inventory.

Chief 400	2014 Chief's vehicle/personnel carrier	City
Engine 401	1990 Class A pumper	City
Tower 402	2010 Aerial truck	City
Engine 403	1996 Class A pumper	City/Vol.
Rescue 40	2017 Heavy Rescue	City
Engine 405	2008 Class A Pumper	Vol.
Engine 406	2004 Class A Pumper	City/Vol.
Brush 408	2020 Brush Truck	Vol.
Utility 409	2008 Pickup Truck/personnel carrier	Vol.

This list reflects ownership of the vehicles only, most of the equipment on each vehicle has been purchased throughout the years by the volunteers and through various grant programs.

The personnel resource of the Department is compiled by the membership. Currently the Department consists of 10 career members and 16 volunteers. The command structure consists of 1 Fire Chief, 2 Assistant Fire Chiefs, 1 Captain, 4 Lieutenants, and 3 Training Officers. These positions are elected by the Volunteer Association. In addition, we have a civil service rank system that applies to the career personnel only.

As you all are aware, the Department and its fleet operate out of one fire station located on 4th Street. This facility will need some attention in repairs and renovation, but should these issues be addressed, the station is well located and could serve the Department for several years to come. Issues that have been corrected over the last decade include new entrance doors and a key fob system for security, new apparatus bay doors, a total roof replacement, upgrades to LED lighting throughout and a new furnace. However, problems with 75-year-old windows, some block deterioration, one final exterior door and substandard electrical wiring continues to compound problems inside the building. You must keep in mind that 9 of the career members each live in the station for 1/3 of the calendar year when they are on duty.

Review of Calendar Year 2022:

Emergency Responses

In 2022, the Department responded to a total of 654 emergency incidents. These incidents range in severity from an animal rescue to major structure fires. You will find attached a summary of our incident types. These responses are accounted for in the City of Elkins, in the Elkins Fire District, and mutual aid responses in and out of the County. The annual response totals exceed 2021 totals by 16%. We are required to track this information and submit to the West Virginia State Fire Marshal's Office through the National Fire Incident Reporting System (NFIRS). Also noted in 2022, we had 0 firefighters injured, 0 firefighter fatalities, 1 civilian injuries, and 0 civilian fatalities.

Non-Emergency Activity Summary

Training

2022 was a very busy year for the Department in training. The Department totaled 2935 hours in training in several different categories. This averages to 128 hours per member. The Department uses several forms of training to achieve the hours required by ISO. Three evenings per month are in-company or station drills. Another method used for training is certification courses. This is an ongoing process and many of the certification courses are required by state law. Some classes were hosted in our station and others the members traveled to. These hours cover a myriad of topics. Daily equipment checks account for 1788 of these hours. Remaining hours include familiarization of our equipment, job related skills or learning new equipment.

Public Education

Often, the Department is called upon for public education. This is the single most effective way to save lives and protect property, because by good public education, we can prevent fires before they start. Public education has been delivered by in-station tours, site visits to schools, day-care centers, and church groups. Career days at different secondary school sites have also been conducted. Our records show that the Department has provided public education to approximately 400 people, of various age groups and of different topics.

Another non-emergency function of the department is city burning permits. City code allows open burning only on Thursdays, Fridays, and Saturdays during the hours of 5PM to 7AM. All open burning except for cooking fires is required to be accompanied by a permit.

Our final community outreach project was smoke alarm installations. In partnership with the State Fire Marshal, we were able to install over 100 smoke alarms in residential properties throughout the city and first due areas.

Significant Highlights of 2022:

2022 had several moments worth mentioning.

January

- A total of 54 calls for service.
- A residential structure fire on Reed Ave in Highland Park was alerted on January 8. We arrived on scene 7 minutes from the 911 call with minor damage to the exterior. This fire was caused from the thawing of water lines by the homeowner.
- A residential structure fire on Robert E. Lee Avenue was alerted on January 21. We arrived on scene 5 minutes from the 911 call, with one elderly male narrowly escaping.

February

- A total of 42 calls for service
- On February 3, EFD responded to a motor vehicle accident with rollover and entrapment on Rt. 33 East, near Faulkner Road. Extrication was accomplished 10 minutes after arrival.
- On February 14, we responded to assist Coalton VFD on a residential structure fire on Hillside Drive
- On February 19, EFD assisted Coalton VFD again, this time on Coalton-Pumpkintown Road
- On February 23, EFD assisted Beverly VFD with a structure fire on S. Hazelwood Road
- On February 26, EFD responded to Faulkner Road for a structure fire in a rental cabin.

March

- A total of 38 calls for service.
- On March 30, EFD responded to an individual who had been injured while working on a vehicle. Subject was extricated.

April

- A total of 29 calls for service.
- EFD was alerted to a structure fire on April 12 on Diamond St. We arrived to find the fire was limited to food on the stove.

May

- A total of 53 calls for service.
- On May 3, EFD assisted Beverly VFD for a storage building fire on Files Creek Road.
- EFD responded to assist Coalton VFD on May 29 for a residential structure fire

June

- A total of 73 calls for service.
- On June 1, EFD responded to Valentines Personal Care Home for a reported structure fire. The fire was contained to a ventilation fan in a bathroom. This incident was notable for a few reasons. First, the facility was in the midst of a outbreak of COVID, several of the residents were positive. Additionally, the staff acted quickly and had almost 90% of the residents evacuated before we arrived. This incident occurred at 4 AM. Assisted by Beverly VFD.
- Later in the day on June 1, our dive team was dispatched to assist Barbour County for a drowning at Party Rock in Arden. EFD divers located the victim.
- On June 16, EFD responded to assist Junior VFD for a structure fire on Buttermilk Ridge Rd
- On June 22, EFD responded to assist Belington VFD with a commercial building fire in downtown Belington.
- Later in the day on June 22, EFD responded to assist Tygart Valley VFC with a barn fire on the Back Road.

July

- A total of 70 calls for service.
- On July 12, EFD responded to the Beverly 5 Lane, along with Randolph EMS and Elkins PD for a motor vehicle accident with injuries and entrapment. Crews extricated the patient in 4 minutes.
- On July 14, EFD responded to the Veterans Intersection with Randolph EMS and Elkins PD or a motor vehicle accident with entrapment.
- On July 14, EFD responded to Upper Isner Creek Road for a structure fire. We were assisted by Beverly VFD. The cause of the fire was determined to be arson. The State Fire Marshal's Office was notified, and an arrest was made following their investigation.

August

- The month of August yielded routine incidents; we had no structure fires that month which is unusual. We responded to 67 routine incidents.

September

- A total of 58 calls for service
- On September 9, EFD responded with the Heavy Rescue to assist Harman and Whitmer VFDs with a vehicle accident with entrapment on Rich Mountain on Rt. 33
- On September 12, EFD responded to Old Weaver Road in Crystal Springs for a structure fire. We were assisted by Beverly and Junior VFDs due to a lack of fire hydrants in the area while Coalton VFD covered our station.
- On September 13, EFD responded to a vehicle accident with entrapment at the intersection of Worth Ave and Central St. Extrication time for 2 patients was 8 minutes
- On September 15, EFD responded with an Engine Company to assist Buckhannon on a structure fire
- On September 18, EFD responded to 913 N Randolph Ave for a structure fire. The fire was confined to the stove, and we were assisted by Beverly VFD
- On September 26, EFD was alerted to assist Beverly VFD with a structure fire on Files Creek Road.
- On September 29, EFD responded to Yellow House Lane for a structure fire. The structure was vacant and was deemed a total loss. This was likely due to the time of day (1:36am) and it being very remote.

October

- A total of 56 calls for service
- On October 7, we were dispatched to a farming accident in Pineview. This incident occurred about an hour prior to the MSFF Firemens Parade starting. There was one fatality.
- On October 12, EFD was alerted to assist Beverly VFD for a structure fire on Rebel Drive.
- On October 27, EFD responded with the Heavy Rescue to assist Beverly VFD for a vehicle accident with entrapment involving a dump truck. EFD worked to assist with the extrication of one critical patient, extrication time was approximately 35 minutes.
- On October 31, EFD responded with the Heavy Rescue to assist Harman VFD with a vehicle accident with entrapment on Rt 33 in Evenwood. EFD worked to assist with the extrication and ran a rope rescue operation to bring patients up the hill. Extrication time 30 minutes.
- After Forest Festival, Tower 402 went out of service and returned to Columbus, Ohio where it was built. Some maintenance issues had been discovered earlier in the year that

required repair that only the manufacturer could accomplish. 3 of the 4 stabilization jacks were leaking and the ladder pivot bearing had to be removed and new bolts installed. This required detaching the ladder from the truck which can only be done by crane. During this time, Buckhannon FD was notified that they would be requested to respond to Elkins with their aerial in the event of a need.

November

- A total of 57 calls for service
- On November 1, EFD responded to assist Belington VFD for a structure fire on Talbott Road.
- On November 12, EFD responded to 1317 Livingston Ave for a structure fire. We were assisted by Beverly VFD. Crews were able to knock a kitchen fire very quickly. The first Engine was on scene 4 minutes after the 911 call.
- On November 18, EFD responded to assist Tygart Valley VFC with a structure fire on Poplar Drive in Wildwood.
- On November 24, EFD responded to assist Coalton VFD with a structure fire on Wheeler Lane. 6 fire departments responded to this incident due to structural conditions and a lack of manpower as it occurred on Thanksgiving Day.
- On November 27, EFD responded to assist Buckhannon FD with a structure fire with entrapment on Pocahontas St
- On November 30, EFD was alerted to Wilson Quality Millwork for a structure fire. The fire was in a sawdust trailer and had extended to the building. We were assisted by Beverly VFD
- The week of Thanksgiving, Tower 402 was delivered back to Elkins with the repairs completed. It was placed back into service that day, as all equipment had been removed and responded on an incident that evening.

December

- A total of 57 calls for service
- On December 2, EFD was alerted for a 2 vehicle accident with injuries and entrapment on Harrison Ave., near the Crystal Springs Exit. A dump truck and delivery truck had collided head on. The 2 occupants in the delivery van were heavily entrapped. Both patients were extricated in 11 minutes and transported to the hospital with minor injuries.
- On December 13, EFD was alerted to a structure fire at 104 Wayne Ave. The cause was from a pellet stove and the residence sustained minor damage. We were assisted by Beverly VFD.
- On December 20, EFD was alerted to assist Belington VFD with a structure fire on S Beverly Pike. 1 Engine responded and assisted with extinguishment.
- On December 25, EFD was alerted to assist Beverly VFD with a structure fire on Dotson Run Rd. The fire was contained to the chimney and our unit was returned shortly after arrival.

The Big Picture: 2021 vs. 2022

When we review the overall call volume, our 16% increase was widespread and cannot be specifically pinpointed to one type of incident. Rescue and EMS type responses increased by 37, where fire related responses increased by 67 calls. We had a larger dollar loss number, but a lower pre incident value of properties. Our mutual aid received numbers increased, however our mutual aid given numbers decreased. As far as specific types of calls, structural fires, vehicle fires, extrication from vehicle accidents decreased but not significantly. Calls like being dispatched and cancelled, power lines down, cooking fires (food on the stove), medical assists and motor vehicle accidents were up. Some of those numbers doubled or nearly doubled. A detailed breakdown is attached to this report.

Many of our goals were achieved this year. With the receipt of ARPA funding, we were able to complete our hose and nozzle upgrades. We also received an additional thermal imaging camera with this funding and are awaiting new structural fire gear for 5 members. With this purchase, the volunteer association also purchased 3 additional sets. When you combine this investment with the purchases over the last 2 to 3 years, 19 of our 26 members are wearing state of the art gear that is less than 5 years old. With the life expectancy of gear at 10 years, this went a long way in updating some gear that was out of date and will allow us to purchase fewer sets per year moving forward to remain in compliance and keeping our members safe.

At this time, the new engine remains on the production schedule at Sutphen, with an expected delivery of July 2023. This process has been a long one, due to supply chain issues. Since signing the contract in June of 2021, the manufacturer has had 4 pricing increases, with 1 more before our unit is delivered. Our estimation is that signing by that contract when we did, we saved the city a total of \$263,555. The same engine on a contract signing today would be over \$850,000.

Looking forward to 2023

As we look forward to the new year, we will have new challenges as well as satisfying the current mission. By the time you read this report, 3 career staff will be promoting to the rank of lieutenant. It is an event that carries some significance as it is the first time in the departments history that promotions have occurred because of a competitive examination. Without divulging any confidential information, I can tell you that the scores were extremely close.

We continue to strive to evaluate our effectiveness. One of our long-term goals continues to be to achieve an ISO rating of 2. To accomplish that goal, we are constantly finding new ways to deliver training and document it properly. Even some of the most menial tasks can influence these hours being accredited and recognized.

It continues to become harder and harder to find, recruit and retain volunteers. The support we have received from the first due fire fee has allowed to hire firefighters to our current staffing level and this model is working and effective. Our concern is twofold. We only received 1 application for a new volunteer in 2022. What do we do in 10 years, when current paid and

volunteer members retire? The paid staff positions will be filled through the civil service testing process. The volunteer ranks still must be filled by those who knock on our door and express an interest in serving their community. It seems as if this is a quality that many individuals are lacking in today's time. Our numbers have an effect on the ISO Rating as well, as we are expected to supply an adequate number of firefighters on the initial or first alarm assignment. Our mutual aid resources also contribute to this minimum number. As the fire service nationwide has been stricken with a lack of participation, it can be difficult to achieve this task 100% of the time.

In March, our department will celebrate its 125th birthday. We have many things planned throughout the course of the year to commemorate the occasion. Some of which will coincide with the arrival of the new engine. We are also coordinating with The Inter Mountain to publish a book and have uncovered a lot of historical artifacts that we hope to include in the book as well as display at the fire house.

We continue to work with Randolph 911/OEM on implementation of mapping and our box alarm assignments. Unfortunately, due to mapping updates in the system one cannot be accomplished without the other and this has created a delay.

Summary:

We look back on 2022 as a year where things started to return to normal. We continue to be grateful for the support of council, the other administrative officers and our community. We look forward to all that 2023 holds for the fire department with an expectation of continuing to serve the community first and foremost in their hour of need.

Respectfully submitted on behalf of all the members of the Elkins Fire Department,



Stephen Himes, BS, NRP
Fire Chief

ATTACHMENTS:

Report #1825: Incident Statistics with Alarm to Arrival

Report #1031: Breakdown of Structure Fires and Other Fires and Incidents

Report #1716: Total Training Hours per Personnel

Report #553: Breakdown by Major Incident Types

Elkins FD

Elkins, WV

This report was generated on 1/13/2023 10:08:05 AM



Incident Statistics with Alarm to Arrival

Start Date: 01/01/2022 | End Date: 12/31/2022

INCIDENT COUNT			
INCIDENT TYPE		# INCIDENTS	
EMS		256	
FIRE		398	
TOTAL		654	
TOTAL TRANSPORTS (N2 and N3)			
APPARATUS	# of APPARATUS TRANSPORTS	# of PATIENT TRANSPORTS	TOTAL # of PATIENT CONTACTS
TOTAL			
PRE-INCIDENT VALUE		LOSSES	
\$4,160,015.00		\$434,535.00	
CO CHECKS			
424 - Carbon monoxide incident		8	
736 - CO detector activation due to malfunction		4	
746 - Carbon monoxide detector activation, no CO		2	
TOTAL		14	
MUTUAL AID			
Aid Type		Total	
Aid Given		41	
Aid Received		25	
OVERLAPPING CALLS			
# OVERLAPPING		% OVERLAPPING	
69		10.55	
LIGHTS AND SIREN - AVERAGE RESPONSE TIME (Dispatch to Arrival)			
Station	EMS	FIRE	
Company 40	0:07:35	0:10:57	
AVERAGE FOR ALL CALLS		0:08:41	
LIGHTS AND SIREN - AVERAGE RESPONSE TIME (Alarm to Arrival)			
Station	EMS	FIRE	
Company 40	0:10:04	0:14:08	
AVERAGE FOR ALL CALLS		0:11:27	
LIGHTS AND SIREN - AVERAGE TURNOUT TIME (Dispatch to Enroute)			
Station	EMS	FIRE	
Company 40	0:03:19	0:04:19	
AVERAGE FOR ALL CALLS		0:03:08	

Custom Report. Only Reviewed Incidents included. CO Checks only includes Incident Types: 424, 736 and 734. # ApparatusTransports = # of incidents where apparatus transported. # Patient Transports = All patients transported by EMS. #Patient Contacts = # of PCR contacted by apparatus. This report now returns both NEMSIS 2 & 3 data as appropriate. For overlapping calls that span over multiple days, total per month will not equal Total count for year.



emergencyreporting.com
Doc Id: 1825
Page # 1 of 2

Elkins FD

Elkins, WV

This report was generated on 1/13/2023 10:09:09 AM



PART III - Breakdown of Structure Fires and Other Fires and Incidents for Date Range

Start Date: 01/01/2022 | End Date: 12/31/2022

	FIRES IN STRUCTURES BY FIXED PROPERTY USE (OCCUPANCY)	NUMBER OF INCIDENTS	# Civilian Fire Casualties		
			DEATHS	INJURIES	EST. PROP. DAMAGE
1	Private Dwellings (1 or 2 family), including mobile homes (FPU 419)	20	0	1	\$322,200.00
2	Apartments (3 or more families) (FPU 429)	4	0	0	\$1,020.00
3	Hotels and Motels (FPU 449)	0	0	0	\$0.00
4	All Other Residential (dormitories, boarding houses, tents, etc.) (FPU 400, 439, 459-499)	1	0	0	\$0.00
5	TOTAL RESIDENTIAL FIRES (Sum of lines 1 through 4)	25	0	1	\$323,220.00
6	Public Assembly (church, restaurant, clubs, etc.) (FPU 100-199)	0	0	0	\$0.00
7	Schools and Colleges (FPU 200-299)	0	0	0	\$0.00
8	Health Care and Penal Institutions (hospitals, nursing homes, prisons, etc.) (FPU 300-399)	1	0	0	\$10,000.00
9	Stores and Offices (FPU 500-599)	0	0	0	\$0.00
10	Industry, Utility, Defense, Laboratories, Manufacturing (FPU 600-799)	0	0	0	\$0.00
11	Storage in Structures (barns, vehicle storage garages, general storage, etc.) (FPU 800-899)	0	0	0	\$0.00
12	Other Structures (outbuildings, bridges, etc.) (FPU 900-999)	1	0	0	\$0.00
13	TOTAL FOR STRUCTURE FIRES (Sum of lines 5 through 12)	27	0	1	\$333,220.00
14a	Fires in Highway Vehicles (autos, trucks, buses, etc.) (IT 131-132, 136-137)	5	0	0	\$54,800.00
14b	Fires in Other Vehicles (planes, trains, ships, construction or farm vehicles, etc.) (IT 130, 133-135, 138)	3	0	0	\$16,000.00
15	Fires outside of Structures with Value Involved, but Not Vehicles (outside storage, crops, timber, etc.) (IT 140, 141, 161, 162, 164, 170-173)	2	0	0	\$10,000.00
16	Fires in Brush, Grass, Wildland (excluding crops and timber), with no value involved (IT 142-143)	2	0	0	\$0.00
17	Fires in Rubbish, Including Dumpsters (outside of structures), with no value involved (IT 150-155)	7	0	0	\$0.00
18	All Other Fires (IT 100, 160, 163)	1	0	0	\$15.00
19	TOTAL FOR FIRES (Sum of lines 13 through 18)	47	0	1	\$414,035.00
20	Rescue, Emergency Medical Responses (ambulances, EMS, rescue) (IT 300-381)	256	0	0	\$0.00
21	False Alarm Responses (malicious or unintentional false calls, malfunctions, bomb scares) (IT 700-746)	48	0	0	\$0.00
22	Mutual Aid Responses Given	30	0	0	\$0.00
23a	Hazards Materials Responses (spills, leaks, etc.) (IT 410-431)	21	0	0	\$0.00
23b	Other Hazardous Responses (arcing wires, bomb removal, power line down, etc.) (IT 440-482, 400)	58	0	0	\$500.00
24	All Other Responses (smoke scares, lock-outs, animal rescues, etc.) (IT 200-251, 500-699, 800-911)	207	0	0	\$0.00
25	TOTAL FOR ALL INCIDENTS (Sum of lines 19 through 24)	667	0	1	\$414,535.00

NFPA Annual Survey: PART III - Breakdown of Structure Fires and Other Fires and Incidents for Date Range For lines 1 to 13, structure fires include incident type 110-129. Only REVIEWED incidents included.

Elkins FD

Elkins, WV

This report was generated on 1/13/2023 10:09:51 AM



Total Training Hours per Personnel by Date Range

Personnel: All Personnel | Station(s): All Stations | Start Date: 01/01/2022 | End Date: 12/31/2022

Personnel Name	Total hours
Arbogast, Cody	17:00
Broschart, William C	54:00
Chabut, Joe	6:00
Corcoran, Hunter B	252:30
Corcoran, John	69:00
Corcoran, Ron	257:00
Erazo, Daniela	4:00
Gainer, Kurt	38:00
Hamrick, Brian	1:00
Hamrick, Kenny	27:00
Hamrick, Nick	45:00
Hamrick, Tommy	25:00
Hamrick, Trevor	100:00
Harris, Brandon	47:00
Harris, Nick	61:00
Harris, Tyler	197:00
Himes, Steve	306:00
Jones, John W	194:00
Judy, Jacob	204:30
Meador, Tom	7:00
Miller, Mike	26:00
Ogden, Matt	238:00
Parrack, Ryan	19:00
Poe, Owen N	226:30
Roth, Andrew L	303:00
Roth, Terrill	53:00
Sicca, Derek E	262:00
Wratchford, Adam	2:00

Count of Personnel : 28

Total Agency Training Hours : 3041:30

Completed and Reviewed classes only. This report pulls training hours from the Training Code Hours field on the Info Page.



emergencyreporting.com

Doc Id: 1716

Page # 1 of 1

Elkins FD

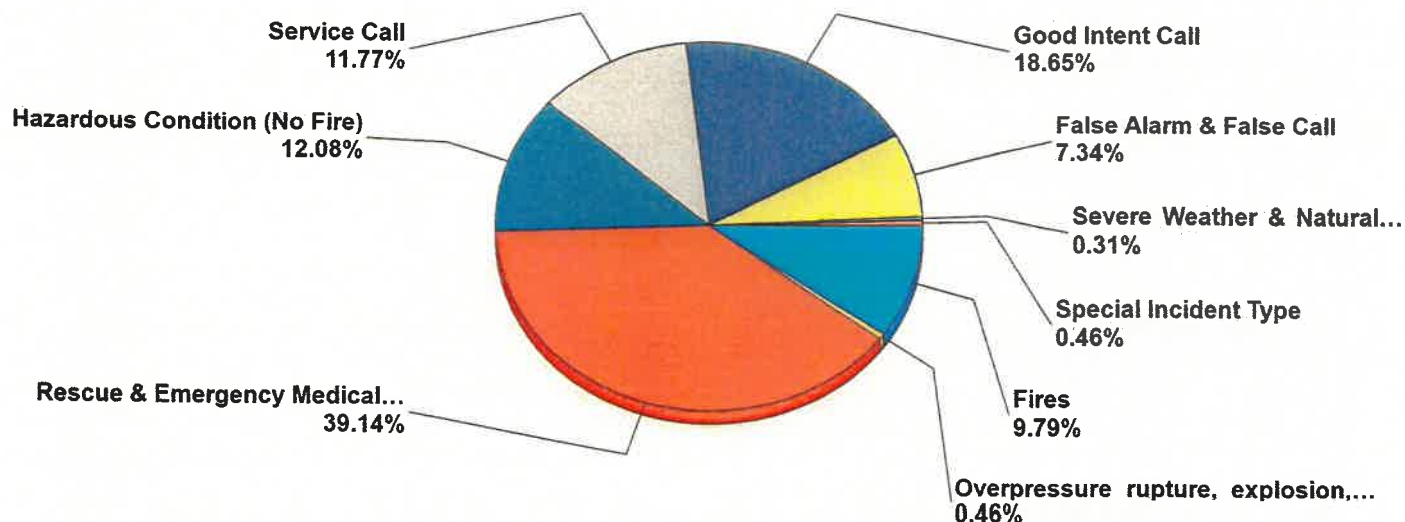
Elkins, WV

This report was generated on 1/9/2023 12:09:18 PM



Breakdown by Major Incident Types for Date Range

Zone(s): All Zones | Start Date: 01/01/2022 | End Date: 12/31/2022



MAJOR INCIDENT TYPE	# INCIDENTS	% of TOTAL
Fires	64	9.79%
Overpressure rupture, explosion, overhear - no fire	3	0.46%
Rescue & Emergency Medical Service	256	39.14%
Hazardous Condition (No Fire)	79	12.08%
Service Call	77	11.77%
Good Intent Call	122	18.65%
False Alarm & False Call	48	7.34%
Severe Weather & Natural Disaster	2	0.31%
Special Incident Type	3	0.46%
TOTAL	654	100%

Only REVIEWED and/or LOCKED IMPORTED incidents are included. Summary results for a major incident type are not displayed if the count is zero.



emergencyreporting.com

Doc Id: 553

Page # 1 of 3

Page 31 of 135

Detailed Breakdown by Incident Type

INCIDENT TYPE	# INCIDENTS	% of TOTAL
111 - Building fire	27	4.13%
113 - Cooking fire, confined to container	10	1.53%
114 - Chimney or flue fire, confined to chimney or flue	5	0.76%
121 - Fire in mobile home used as fixed residence	2	0.31%
131 - Passenger vehicle fire	4	0.61%
132 - Road freight or transport vehicle fire	1	0.15%
138 - Off-road vehicle or heavy equipment fire	3	0.46%
141 - Forest, woods or wildland fire	1	0.15%
142 - Brush or brush-and-grass mixture fire	2	0.31%
150 - Outside rubbish fire, other	1	0.15%
151 - Outside rubbish, trash or waste fire	3	0.46%
154 - Dumpster or other outside trash receptacle fire	3	0.46%
163 - Outside gas or vapor combustion explosion	1	0.15%
171 - Cultivated grain or crop fire	1	0.15%
243 - Fireworks explosion (no fire)	1	0.15%
251 - Excessive heat, scorch burns with no ignition	2	0.31%
300 - Rescue, EMS incident, other	1	0.15%
311 - Medical assist, assist EMS crew	63	9.63%
320 - Emergency medical service, other	1	0.15%
321 - EMS call, excluding vehicle accident with injury	4	0.61%
322 - Motor vehicle accident with injuries	35	5.35%
323 - Motor vehicle/pedestrian accident (MV Ped)	3	0.46%
324 - Motor vehicle accident with no injuries.	134	20.49%
331 - Lock-in (if lock out , use 511)	1	0.15%
341 - Search for person on land	2	0.31%
350 - Extrication, rescue, other	2	0.31%
352 - Extrication of victim(s) from vehicle	5	0.76%
353 - Removal of victim(s) from stalled elevator	2	0.31%
357 - Extrication of victim(s) from machinery	2	0.31%
361 - Swimming/recreational water areas rescue	1	0.15%
400 - Hazardous condition, other	15	2.29%
410 - Combustible/flammable gas/liquid condition, other	1	0.15%
411 - Gasoline or other flammable liquid spill	3	0.46%
412 - Gas leak (natural gas or LPG)	7	1.07%
413 - Oil or other combustible liquid spill	1	0.15%
422 - Chemical spill or leak	1	0.15%
424 - Carbon monoxide incident	8	1.22%
440 - Electrical wiring/equipment problem, other	1	0.15%
441 - Heat from short circuit (wiring), defective/worn	2	0.31%
442 - Overheated motor	1	0.15%
444 - Power line down	27	4.13%
445 - Arcing, shorted electrical equipment	5	0.76%
460 - Accident, potential accident, other	3	0.46%
462 - Aircraft standby	3	0.46%
471 - Explosive, bomb removal (for bomb scare, use 721)	1	0.15%
500 - Service Call, other	18	2.75%
511 - Lock-out	3	0.46%
520 - Water problem, other	2	0.31%
531 - Smoke or odor removal	4	0.61%
542 - Animal rescue	2	0.31%
550 - Public service assistance, other	2	0.31%
551 - Assist police or other governmental agency	10	1.53%
552 - Police matter	1	0.15%
553 - Public service	15	2.29%
561 - Unauthorized burning	13	1.99%

Only REVIEWED and/or LOCKED IMPORTED incidents are included. Summary results for a major incident type are not displayed if the count is zero.

Detailed Breakdown by Incident Type

INCIDENT TYPE	# INCIDENTS	% of TOTAL
571 - Cover assignment, standby, moveup	7	1.07%
600 - Good intent call, other	22	3.36%
611 - Dispatched & cancelled en route	62	9.48%
621 - Wrong location	1	0.15%
622 - No incident found on arrival at dispatch address	10	1.53%
631 - Authorized controlled burning	6	0.92%
650 - Steam, other gas mistaken for smoke, other	1	0.15%
651 - Smoke scare, odor of smoke	18	2.75%
671 - HazMat release investigation w/no HazMat	1	0.15%
672 - Biological hazard investigation, none found	1	0.15%
700 - False alarm or false call, other	4	0.61%
712 - Direct tie to FD, malicious false alarm	1	0.15%
731 - Sprinkler activation due to malfunction	3	0.46%
733 - Smoke detector activation due to malfunction	1	0.15%
734 - Heat detector activation due to malfunction	1	0.15%
735 - Alarm system sounded due to malfunction	8	1.22%
736 - CO detector activation due to malfunction	4	0.61%
740 - Unintentional transmission of alarm, other	3	0.46%
741 - Sprinkler activation, no fire - unintentional	1	0.15%
743 - Smoke detector activation, no fire - unintentional	6	0.92%
745 - Alarm system activation, no fire - unintentional	14	2.14%
746 - Carbon monoxide detector activation, no CO	2	0.31%
815 - Severe weather or natural disaster standby	2	0.31%
900 - Special type of incident, other	1	0.15%
911 - Citizen complaint	2	0.31%
TOTAL INCIDENTS:	654	100%

Only REVIEWED and/or LOCKED IMPORTED incidents are included. Summary results for a major incident type are not displayed if the count is zero.



emergencyreporting.com

Doc Id: 553

Page # 3 of 3

Page 33 of 135

Monthly Report for FY2023

Month of December

Fund		Revenues	Expenditures		
General		\$124,782.01	\$442,068.65	Percent of Revenues Collected as per	Percent of Yr. Completed 50.00
Unassigned Fund Balance					270,054.00
County Tax		\$7,882.29		67.12%	1,094,407.00
B & O Tax		\$3,826.25		54.59%	1,305,000.00
Hotel/Motel Tax		\$10,453.96		84.80%	160,100.00
Gas & Oil Severance Tax		\$0.00		336.03%	12,000.00
2% City Utility Tax		\$6,875.25		55.89%	67,000.00
Utility Excise Tax		\$18,671.79		76.99%	290,000.00
Liquor Tax		\$0.00		46.57%	95,000.00
Police		\$2,199.67		62.39%	23,100.00
Municipal Court		\$6,344.77		84.34%	47,800.00
Code Enforcement		\$569.53		53.19%	30,700.00
Business License		\$420.00		31.38%	29,000.00
Intergovernmental		\$25,167.91		56.02%	320,503.00
Franchise/IRP Fees		\$12,095.84		50.84%	134,000.00
Phil Gainer Community Center		\$6,755.00		97.23%	30,000.00
Misc. Revenue		\$23,519.75		236.01%	72,060.00
Municipal Sales Tax		\$0.00		52.72%	1,400,000.00
		\$124,782.01		62.43%	5,380,724.00
Unassigned Fund Balance					500,000.00
Fire		\$79,387.51	\$95,883.76	62.28%	916,093.00
					1,416,093.00
Unassigned Fund Balance					115,000.00
Landfill		\$379.95	\$1,327.57	8.40%	5,500.00
					120,500.00
Unassigned Fund Balance					1,000,000.00
Sanitation		\$128,929.99	\$119,021.13	53.86%	1,421,520.00
					2,421,520.00
Unassigned Fund Balance					688,019.00
Sewer		\$200,168.64	\$228,565.80	53.20%	2,402,593.00
					3,090,612.00
Unassigned Fund Balance					0.00
Water		\$414,032.60	\$308,134.99	57.58%	3,502,700.00
					3,502,700.00

Bank Account Name	Balance as of 12/31/2022
-------------------	-----------------------------

ARPA	\$1,243,773.27
Elkins Building Comm. Sinking Fund	\$0.00
Elkins Municipal Building Comm.	\$0.00
Financial Stabilization	\$1,343,706.15
Fire Pension Fund	\$2,274,214.66
Firemen's Pension & Relief Fund	\$0.00
Landfill Access Escrow	\$1,770,462.06
Landfill Post Closure	\$48,663.29
Payroll	\$28,134.82
Police Forfeitures	\$12,116.81
Police Pension Fund	\$3,974,179.72
Police Seizures	\$26,814.73
Policemen's Pension & Relief Fund	\$0.00
Pooled Cash-Coal Severance Fund	\$161,829.03
Pooled Cash-Fire Fund	\$593,365.69
Pooled Cash-General Fund	\$1,099,071.47
Pooled Cash-Landfill Fund	\$123,074.92
Pooled Cash-Parks Fund	\$954,515.50
Pooled Cash-Sanitation Fund	\$1,215,263.78
Pooled Cash-Sewer Fund	\$445,309.64
Pooled Cash-Water Fund	\$112,099.79
Sewer Depreciation	\$251,779.47
Sewer O&M	\$260,734.19
Sewer Project-Phase II	\$49.26
Water Depreciation	\$62,133.09
Water O&M	\$207,344.64

VENDOR SET: 01 Elkins

BANK: ARPA America Rescue Plan Act

DATE RANGE: 1/02/2023 THRU 1/13/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00874	Municipal Emergency Services I							
I-IN1805069	thermal camera kit	R	1/11/2023	5,808.97		000087		5,808.97
01447	Heritage Fire Equipment							
I-7068	nozzle	R	1/11/2023	732.36		000088		732.36

* * T O T A L S * *

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	2	6,541.33	0.00	6,541.33
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:	2	6,541.33	0.00	6,541.33
BANK: ARPA TOTALS:	2	6,541.33	0.00	6,541.33

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 1/02/2023 THRU 1/13/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00741	Great-West Trust Company LLC							
I-VF 202301101365	Voya	D	1/10/2023	355.00		004300		
I-VF2202301101365	Voya AT	D	1/10/2023	50.00		004300		405.00
02265	Brian Jenkins							
I-1211-121622 EXP	ETC Center 121122-121622	R	1/03/2023	324.50		012757		324.50
02331	William Mallow							
I-121122-121622 EXP	ETC 121122-121622	R	1/03/2023	324.50		012758		324.50
00034	ATCO International							
I-I0606630	case of cleaning wipes	R	1/04/2023	129.60		012759		129.60
00396	Kay Casto & Chaney PLLC							
I-140708	PSC Invest 11/2022	R	1/04/2023	108.00		012760		
I-140709	2022 Water Rate Inc	R	1/04/2023	275.00		012760		
I-140710	Cable Fran Renewal 11/2022	R	1/04/2023	4,288.55		012760		4,671.55
00468	Miss Utility of West Virginia,							
I-WV22-5038	Message Fees Nov 2022	R	1/04/2023	96.20		012761		96.20
00471	Mon Power							
I-Barron 122022	Barron Ave 111522-121422	R	1/04/2023	11,247.59		012762		11,247.59
00493	Municipal Emergency Services I							
I-IN1796739	Pants/Shirts/Belts	R	1/04/2023	2,045.50		012763		
I-IN1801988	Riggers Belt 3	R	1/04/2023	109.50		012763		2,155.00
00666	State Equipment Inc							
I-BW19092	Roller Repair	R	1/04/2023	780.35		012764		780.35
00701	Toshiba Financial Services							
I-489648543	LEX M5255 TE4515AC 010923	R	1/04/2023	493.44		012765		
I-489873737	LexC4150/TE3005AC	R	1/04/2023	221.37		012765		714.81
01751	COE WWTP							
I-202212143548	11/22 Backwash	R	1/04/2023	1,062.40		012766		1,062.40
02277	Vigilant Custom Creations							
I-021	Motorola Radio/charger	R	1/04/2023	6,000.00		012767		6,000.00
02336	GAI Consultants							
I-2182437	Streetscape Inventory/Analysis	R	1/04/2023	10,462.50		012768		10,462.50

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 1/02/2023 THRU 1/13/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
02347	LEAF							
I-14110110	Toshiba E4515AC	R	1/04/2023	317.44		012769		
I-14148373	E478S 018123	R	1/04/2023	203.15		012769		520.59
02389	Fire & Police Selection Inc							
I-20615	Materials for Lt Exam	R	1/04/2023	825.00		012770		825.00
00116	Child Support Enforcement							
I-CDS202301101365	Child Support	R	1/10/2023	528.00		012771		528.00
00121	Citizens Bank of WVFP							
I-FP 202301101365	Fire Pension	R	1/10/2023	639.40		012772		639.40
00122	Citizens Bank of WVFP							
I-PP 202301101365	Police Pension	R	1/10/2023	175.42		012773		
I-PPN202301101365	Police Pension-2010 Forward	R	1/10/2023	455.47		012773		630.89
00147	COE Misc							
I-MIS202301101365	Misc Reimbursements	R	1/10/2023	572.99		012774		572.99
00150	COE Payroll							
I-T1 202301101365	Federal Withholding	R	1/10/2023	13,856.75		012775		13,856.75
00151	COE Payroll							
I-T3 202301101365	FICA	R	1/10/2023	13,498.86		012776		
I-T4 202301101365	Medicare	R	1/10/2023	4,847.36		012776		18,346.22
00152	COE Payroll							
I-T2 202301101365	State Withholding	R	1/10/2023	6,931.00		012777		6,931.00
00203	Davis Trust Company							
I-CC 202301101365	Employee Christmas Club	R	1/10/2023	2,520.00		012778		2,520.00
00747	Washington National Insurance							
I-WN 202301101365	Washington National Insurance	R	1/10/2023	438.31		012779		438.31
00837	COE Payroll Reimbursement							
I-001202301101365	Payroll Reimbursement	R	1/10/2023	48,327.28		012780		
I-006202301101365	Payroll Reimbursement	R	1/10/2023	5,026.72		012780		
I-036202301101365	Payroll Reimbursement	R	1/10/2023	19,008.60		012780		
I-400202301101365	Payroll Reimbursement	R	1/10/2023	21,779.35		012780		
I-401202301101365	Payroll Reimbursement	R	1/10/2023	14,970.29		012780		
I-404202301101365	Payroll Reimbursement	R	1/10/2023	11,737.57		012780		120,849.81

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 1/02/2023 THRU 1/13/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
01885	Colonial Life							
I-CL 202301101365	Colonial Life-AT	R	1/10/2023	85.92		012781		
I-CLP202301101365	Colonial Life-PT	R	1/10/2023	52.52		012781		138.44
1	MCCOLLAM, JAMES							
I-000202301101361	US REFUND	R	1/10/2023	6.89		012782		6.89
1	RANDOLPH CO HOUSING							
I-000202301101362	US REFUND	R	1/10/2023	221.85		012783		221.85
1	COOPER, MAXINE							
I-000202301101363	US REFUND	R	1/10/2023	2.50		012784		2.50
1	OWENS, JAMES A							
I-000202301101364	US REFUND	R	1/10/2023	332.07		012785		332.07
00047	Truist Governmental Finance							
I-00007 011923	9948000234-07 01/19/23	R	1/11/2023	4,984.55		012786		4,984.55
00119	CIT Technology Finance Serv, I							
I-41377225	Kyocera 1/6/23 900031058800	R	1/11/2023	52.50		012787		
I-41396450	KM 010823 AAJP011202616	R	1/11/2023	55.00		012787		107.50
00143	COE General Fund 2							
I-IND 01-2023	Monthly Indirects 01/2023	R	1/11/2023	24,270.24		012788		24,270.24
00149	COE Parks and Recreation							
I-Support 01/2023	Monthly Support 01/2023	R	1/11/2023	25,483.00		012789		25,483.00
00156	COE Sewer Depreciation Account							
I-12/2022	Sewer Depr Deposit 12/2022	R	1/11/2023	4,938.71		012790		4,938.71
00202	Davis Trust Company							
I-12755 012223	3113776-12755 01/22/2023	R	1/11/2023	4,256.84		012791		4,256.84
00211	Elkins Depot Welcome Center							
I-H/M 11/2022	H/M Collection November 2022	R	1/11/2023	5,226.98		012792		5,226.98
00235	Elkins Building Comm.							
I-01/2023	Monthly pmt 01/2023	R	1/11/2023	3,483.79		012793		3,483.79
00247	Elkins Truck Service, Inc							
I-153470	exhaust stuck	R	1/11/2023	163.80		012794		163.80

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 1/02/2023 THRU 1/13/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00287	Garrett Equipment Rentals, LLC							
I-63587	Bearings/ConveyorChain	R	1/11/2023	1,761.37		012795		1,761.37
00381	Grover C Jackson Jr							
I-Rent 01/2023	Rent 01/2023	R	1/11/2023	1,800.00		012796		1,800.00
00471	Mon Power							
I-9000889043	Consumption/Lighting	R	1/11/2023	41,845.38		012797		
I-Park St 010523	Park St1011-103022	R	1/11/2023	9.20		012797		41,854.58
00479	Amtower Auto Supply, Inc.							
I-182512	Tools for Meter Room	R	1/11/2023	1,958.82		012798		1,958.82
00484	Mountaineer Gas Company							
I-122922 Natl Gas	Natl Gas 122922	R	1/11/2023	12,249.30		012799		12,249.30
00498	Naylor's Ace Hardware							
I-456077	Kerosene Heater	R	1/11/2023	459.99		012800		459.99
00578	Randolph Elkins Health Departm							
I-CLee PIC	CLee PIC food est training	R	1/11/2023	75.00		012801		75.00
00628	Seneca Designs							
I-TSHIRTS 12/22	TShirt order	R	1/11/2023	836.25		012802		836.25
00698	Tire & Rubber Inc.							
I-121744	department tires	R	1/11/2023	428.00		012803		428.00
00701	Toshiba Financial Services							
I-490232675	E4515AC 121422-011523	R	1/11/2023	125.59		012804		
I-490541620	XM3250 011323	R	1/11/2023	69.00		012804		194.59
00711	Tygart Valley Transfer, Inc.							
I-00009326	Comm	R	1/11/2023	179.84		012805		
I-00009333	Res	R	1/11/2023	602.95		012805		
I-00009336	Res	R	1/11/2023	725.45		012805		
I-00009338	Comm	R	1/11/2023	589.92		012805		
I-00009364	Comm	R	1/11/2023	206.77		012805		
I-00009367	Res	R	1/11/2023	540.39		012805		
I-00009368	Comm	R	1/11/2023	637.70		012805		
I-00009369*	Res	R	1/11/2023	511.72		012805		
I-00009401	Comm	R	1/11/2023	192.87		012805		
I-00009404	Comm	R	1/11/2023	738.48		012805		
I-00009405	Res	R	1/11/2023	682.88		012805		
I-00009407	Res	R	1/11/2023	838.39		012805		
I-00009429	Comm	R	1/11/2023	164.20		012805		
I-00009433	Comm	R	1/11/2023	198.96		012805		
I-00009437	Comm	R	1/11/2023	167.68		012805		

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 1/02/2023 THRU 1/13/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
I-00009446	Comm	R	1/11/2023	172.89		012805		
I-00009450	Res	R	1/11/2023	39.96		012805		
I-00009451	Res	R	1/11/2023	581.23		012805		
I-00009454	Res	R	1/11/2023	366.63		012805		
I-00009455	Comm	R	1/11/2023	442.22		012805		
I-00009473	Comm	R	1/11/2023	553.43		012805		
I-00009475	Comm	R	1/11/2023	172.02		012805		
I-00009483	Res	R	1/11/2023	566.46		012805		
I-00009484	Comm	R	1/11/2023	210.25		012805		
I-00009486	Res	R	1/11/2023	582.96		012805		
I-00009487	Comm	R	1/11/2023	599.47		012805		
I-00009498	Res	R	1/11/2023	104.26		012805		
I-00009510	Res	R	1/11/2023	627.27		012805		
I-00009512	Comm	R	1/11/2023	521.28		012805		
I-00009514	Res	R	1/11/2023	583.83		012805		
I-00009523	Comm	R	1/11/2023	205.91		012805		
I-00009532	Comm	R	1/11/2023	168.55		012805		
I-00009542	Residential	R	1/11/2023	487.40		012805		
I-00009544	Comm	R	1/11/2023	768.89		012805		
I-00009547	Res	R	1/11/2023	602.08		012805		
I-00009585	Res	R	1/11/2023	702.86		012805		
I-00009592	Comm	R	1/11/2023	774.97		012805		
I-00009593	Residential	R	1/11/2023	822.75		012805		
I-00009614	Comm	R	1/11/2023	246.74		012805		
I-00009616	Comm	R	1/11/2023	198.09		012805		
I-00009629	Res	R	1/11/2023	569.06		012805		
I-00009630	Res	R	1/11/2023	390.09		012805		
I-00009631	Comm	R	1/11/2023	426.58		012805		
I-00009659	Res	R	1/11/2023	54.73		012805		
I-00009661	Comm	R	1/11/2023	146.83		012805		
I-00009666	Res	R	1/11/2023	512.59		012805		
I-00009669	Res	R	1/11/2023	476.10		012805		
I-00009673	Comm	R	1/11/2023	416.16		012805		
I-00009687	Comm	R	1/11/2023	259.77		012805		
I-00009690	Comm	R	1/11/2023	775.84		012805		
I-00009702	Res	R	1/11/2023	600.34		012805		
I-00009703	Comm	R	1/11/2023	425.71		012805		
I-00009706	Res	R	1/11/2023	419.63		012805		
I-00009714	Comm	R	1/11/2023	197.22		012805		
I-00009717	Comm	R	1/11/2023	77.32		012805		
I-00009725	Comm	R	1/11/2023	198.09		012805		
I-00009733	Res	R	1/11/2023	656.81		012805		
I-00009734	Comm	R	1/11/2023	501.30		012805		
I-00009739	Res	R	1/11/2023	532.57		012805		
I-00009744	Comm	R	1/11/2023	178.97		012805		
I-00009765	Comm	R	1/11/2023	188.53		012805		
I-00009774	Res	R	1/11/2023	615.98		012805		
I-00009776	Comm	R	1/11/2023	631.62		012805		

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 1/02/2023 THRU 1/13/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
I-00009779	Res	R	1/11/2023	709.81		012805		
I-00009806	Comm	R	1/11/2023	198.09		012805		
I-00009810	Res	R	1/11/2023	495.22		012805		
I-00009811	Comm	R	1/11/2023	185.05		012805		
I-00009812	Comm	R	1/11/2023	396.17		012805		
I-00009813	Residential	R	1/11/2023	365.76		012805		
I-00009824	Comm	R	1/11/2023	161.60		012805		
I-00009835	Res	R	1/11/2023	504.77		012805		
I-00009838	Res	R	1/11/2023	430.06		012805		
I-00009840	Comm	R	1/11/2023	424.84		012805		
I-00009854	Comm	R	1/11/2023	231.10		012805		
I-00009857	Res	R	1/11/2023	47.78		012805		
I-00009865	Res	R	1/11/2023	529.97		012805		
I-00009868	Res	R	1/11/2023	515.20		012805		
I-00009869	Comm	R	1/11/2023	503.04		012805		
I-00009884	Res	R	1/11/2023	393.57		012805		
I-00009885	Comm	R	1/11/2023	188.53		012805		
I-00009886	Res	R	1/11/2023	417.02		012805		
I-00009888	Comm	R	1/11/2023	485.66		012805		
I-00009907	Res	R	1/11/2023	679.40		012805		
I-00009909	Comm	R	1/11/2023	146.83		012805		
I-00009914	Comm	R	1/11/2023	614.24		012805		
I-00009915	Res	R	1/11/2023	825.36		012805		
I-00009916	Res	R	1/11/2023	191.14		012805		
I-00009918	Res	R	1/11/2023	499.56		012805		
I-00009937	Comm/Clean out	R	1/11/2023	224.61		012805		
I-00009943	Res	R	1/11/2023	536.05		012805		
I-00009948	Res	R	1/11/2023	754.99		012805		
I-00009950	Comm / Cleanout	R	1/11/2023	210.71		012805		
I-00009951	Comm	R	1/11/2023	472.63		012805		
I-00009979	Comm/cleanout	R	1/11/2023	153.37		012805		
I-00009984	Res	R	1/11/2023	594.26		012805		
I-00009987	Comm	R	1/11/2023	252.82		012805		
I-00009996	Comm	R	1/11/2023	460.46		012805		
I-00009997	Res	R	1/11/2023	462.20		012805		
I-00010018	Res	R	1/11/2023	60.82		012805		
I-00010023	Comm	R	1/11/2023	172.89		012805		
I-00010025	Res	R	1/11/2023	588.18		012805		
I-00010039	Res	R	1/11/2023	509.12		012805		
I-00010042	Comm	R	1/11/2023	579.49		012805		43,504.81
00780	Woodlands Development Group							
I-River St	River St-Remediation	R	1/11/2023	30,000.00		012806		30,000.00

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 1/02/2023 THRU 1/13/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00805	FBMC							
I-RCHEN 12/2022	RChenoweth 3rd pay 12/2022	R	1/11/2023	26.27		012807		
I-RShreve 12/22	RedgieShreve 3rd pay 12/22	R	1/11/2023	38.71		012807		64.98
00848	Snap-on							
I-12192280354	tools for meter room	R	1/11/2023	1,054.64		012808		1,054.64
00900	National Road Utility Supply,							
I-334542 334177	Couplings/Gaskets etc	R	1/11/2023	8,488.21		012809		8,488.21
01292	COE Sewer O & M Account							
I-12/2022	Sewer O & M Deposit 12/2022	R	1/11/2023	13,153.88		012810		13,153.88
01313	COE Water O & M Account							
I-SB234 Req 10/31/22	SB234 Requirement 10/31/2022	R	1/11/2023	19,353.21		012811		19,353.21
01390	Phoenix Solutions, LLC							
I-4614-4639-4662	Chemicals	R	1/11/2023	12,363.42		012812		
I-4669	Chemicals	R	1/11/2023	3,525.00		012812		15,888.42
01447	Heritage Fire Equipment							
I-7037-38-39-40-41	Pump Test	R	1/11/2023	1,425.00		012813		1,425.00
01790	Crim Law Office PLLC							
I-317 10/2022	Attnty Services 10/2022	R	1/11/2023	8,116.72		012814		
I-MUNCT 10/2022	Municipal Ct 10/2022	R	1/11/2023	2,910.00		012814		11,026.72
01942	Elkins Municipal Building Comm							
I-1214756-11 011523	01214756-11 011523	R	1/11/2023	4,833.20		012815		4,833.20
02347	LEAF							
I-14148372	Tosh E478S 011823	R	1/11/2023	96.74		012816		96.74
02379	Terri Reed Cutright & Associat							
I-Strategic Pln Ph2	StrategicPlanning Ph2 Complete	R	1/11/2023	3,000.00		012817		3,000.00
1	CLEANUP CONTRACTORS							
I-000202301121366	AR REFUND	R	1/12/2023	1,021.02		012818		1,021.02
00483	Mountain Valley Bank							
I-1202553-22 11223	1202553-22/Int LOC 11223	R	1/12/2023	207.53		012819		207.53

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 1/02/2023 THRU 1/13/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
-------------	------	--------	---------------	-------------------	----------	-------------	-----------------	-----------------

* * T O T A L S * *

NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS: 63	492,981.38	0.00	492,981.38
HAND CHECKS: 0	0.00	0.00	0.00
DRAFTS: 1	405.00	0.00	405.00
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	

TOTAL ERRORS: 0

NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
VENDOR SET: 01 BANK: Pool TOTALS: 64	493,386.38	0.00	493,386.38
BANK: Pool TOTALS: 64	493,386.38	0.00	493,386.38
REPORT TOTALS: 66	499,927.71	0.00	499,927.71

SELECTION CRITERIA

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

CHECK SELECTION

CHECK RANGE: 000000 THRU 999999
DATE RANGE: 1/02/2023 THRU 1/13/2023
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:	January 19, 2023
Section:	Unfinished business
Category:	Ordinance
Agenda Item Name:	Ordinance 309: An Ordinance of the Common Council of the City of Elkins, West Virginia, Renewing Franchise Agreement with Cequel III Communications II, LLC DBA Optimum (2nd and final reading)
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. Ordinance 309

ORDINANCE 309

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKINS, WEST VIRGINIA, RENEWING FRANCHISE AGREEMENT WITH CEQUEL III COMMUNICATIONS II, LLC DBA OPTIMUM

WHEREAS, the City of Elkins ("City") entered into a cable franchise agreement with Triax Cablevision USA, LP. ("Triax Agreement"), pursuant to an Ordinance adopted by the City on November 15, 1995. The Triax Agreement was for a term of 15 years commencing on November 16, 1995, and terminating on November 15, 2010, at midnight; and

WHEREAS, by Consent Resolution ("Alliance Consent") adopted by the City on April 2, 2003, the transfer and control of Triax Cablevision USA, L.P. to Alliance Communications, LLC ("Alliance") was approved permitting Alliance to become the owner of the franchise covered by the Triax Agreement; and

WHEREAS, on August 21, 2003, the Mayor of Elkins executed a "Consent or Approval To Transfer CATV Franchise" ("Suddenlink Consent") which purported to transfer the cable system owned and operated in the City by Alliance Communications Partners, L.P. and the franchise and Triax Agreement to Cequel III Communications II, LLC dba Suddenlink Communications ("Suddenlink"); and

WHEREAS, the Suddenlink Consent references the filing with the City of FCC Form 394, a form required to be filed prior to the transfer of a Cable TV franchise, by Alliance Communications Partners, L.P. and Suddenlink on or about July 30, 2003; and

WHEREAS, Suddenlink operated the City cable system under the terms of the Triax Agreement since the 2003 closing on the transfer of the system until October 9, 2015 when Suddenlink and the City entered into a Franchise Agreement which expired on October 8, 2022; and

WHEREAS, Suddenlink continued to operate the franchise under the terms and conditions of the 2015 Agreement until August 19, 2022; and

WHEREAS, on August 19, 2022, Cequel III Communications II, LLC, changed its trade name to OPTIMUM, and

WHEREAS, OPTIMUM has continued to operate the franchise under the same terms and conditions as set forth in the 2015 Agreement since August 19, 2022; and

WHEREAS, the City has followed all required procedures to consider and act upon the Franchise Renewal Application, and considered the comments of all interested parties at an administrative hearing held on November 7, 2022, as well as a hearing on this ordinance on December 15, 2022 (collectively, the "Public Hearings"); and

WHEREAS, it is in the public interest to maintain continuous Cable Television service within the City; and

WHEREAS, the Public Hearings did not produce substantial public opposition to the renewal of the Franchise Agreement; and

WHEREAS, the City believes it is in the interest of the community to approve the Franchise Agreement.

NOW THEREFORE BE IT ORDAINED, that with respect to and in accordance with the provisions of *West Virginia Code* §24D-1-12. the City hereby approves the Franchise Agreement as follows:

SECTION 1. The City hereby approves the Franchise Agreement with OPTIMUM for a period of five (5) years with the understanding that said Franchise Agreement shall become the property of any cable entity to which OPTIMUM may, in compliance with applicable provisions of the law, transfer control of its cable franchise; and

SECTION 2. The Franchise Agreement shall take effect immediately upon enactment hereof or as otherwise required by law.

SECTION 3. OPTIMUM shall notify the City of the closing on any transaction wherein the transfer of control of its cable franchise has occurred resulting in the transfer of the Franchise Agreement to the control of another entity.

PASSED, ADOPTED AND APPROVED on first reading: December 1, 2022

PASSED, ADOPTED AND APPROVED on final reading: __ day of _____, 2023

Jerry A. Marco, Mayor

Attest:

Jessica R. Sutton, City Clerk

FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement") is between the CITY OF ELKINS, WEST VIRGINIA, a Municipal Corporation (hereinafter referred to as "CITY" or "FRANCHISE AUTHORITY") and CEQUEL III COMMUNICATIONS II, LLC, , (hereinafter referred to as "FRANCHISEE").

The City Council finds as follows:

A. Franchisee filed an Application For Renewal of A Cable Franchise ("Application") to construct, operate and repair a Cable System in, over, along and under City roads and appropriate Rights-of-Way in the City of ELKINS for the purpose of providing Cable Service.

B. The City has conducted hearings to consider Franchisee's compliance with the terms of the existing franchise and with applicable law; the quality of Suddenlink's service in light of community needs; the financial, technical, and legal qualifications of Franchisee; and to determine whether Franchisee's plans for constructing and operating its Cable System are adequate to meet the future cable-related community needs and interests.

C. The City has relied on Franchisee's written representations and has considered all information Franchisee has presented to it.

D. The City Council, having considered the interests proposed and advanced, has found that the renewal of the non-exclusive Franchise requested, subject to conditions, is in the public interest.

E. Franchisee is willing to accept the conditions of the Franchise Agreement; and

F. The Elkins City Council held a public hearing on the Application on the 15th day of December 2022, after providing legal notice of the Application and of the hearing, as required by law.

Upon the adoption of a Cable Ordinance by the City Council, the City hereby grants a cable television franchise to Franchisee as follows:

SECTION 1
Definition of Terms

1. **Terms.** For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, (the "Cable Act"), The Cable Television Systems Act, West Virginia Code §24D-1-1 *et seq.*, ("West Virginia Cable Law"), and relevant City of Elkins ordinances (collectively "Applicable Law"), all as amended from time to time, unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.
- 1.1. **Access, PEG Access, or PEG Use.** The availability of the Cable System for Public, Education or Government ("PEG") use by various agencies, institutions, organizations, groups, and individuals, including the City and its Designated Access Providers, to acquire, create, and distribute video and audio communications not under Franchisee's editorial control, including, but not limited to:
 - 1.1.1. **Public Access or Public Use** means Access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the designated programmers or users having editorial control over their communications;
 - 1.1.2. **Education Access or Education Use** means Access where Schools are the designated programmers or users having editorial control over their communications;
 - 1.1.3. **Government Access or Government Use** means Access where government institutions or their designees are the designated programmers or users having editorial control over their communications;
- 1.2. **Basic Service.** Any service tier which includes the retransmission of local television broadcast signals.
- 1.3. **Cable Ordinance.** That ordinance adopted December 15, 2022 approving the renewal of a cable television franchise now held by Cequel III Communications II, LLC.

- 1.4. **Cable Service**. (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) the subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 1.5. **Cable System**. Shall be as defined in the West Virginia Cable Law and, as used herein specifically refers to the Franchisee's Cable System. A reference to a Cable System includes pedestals, enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics and other equipment necessary to operate the Cable System.
- 1.6. **Channel**. A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.
- 1.7. **Designated Access Provider**. A non-commercial entity or entities designated by the City to manage some or all of the PEG Channels, facilities and equipment.
- 1.8. **Franchise Area**. The Franchise Area shall include all areas within the City Limits as currently exist, and as may be extended during the period of the Franchise.
- 1.9. **Franchise**. The nonexclusive rights granted pursuant to this Agreement, and any amendments, exhibits, or appendices hereto, to construct, operate, and maintain a Cable System along the public Right-of-Way within the Franchise Area.
- 1.10. **Franchisee**. Cequel III Communications II, LLC.
- 1.11. **Gross Revenues**. Any and all revenues derived directly, now or in the future during the Term of this Franchise, actually received by the Franchisee, its affiliates, subsidiaries, parent company, and any person in which the Franchisee has an interest, from the operation of the Cable System to provide Cable Service; provided, however, that gross revenues shall not include any taxes, fees or assessments of general applicability collected by Franchisee from Subscribers for pass-through to a government agency.
- 1.12. **Person**. An individual, partnership, association, organization, corporation, trust or government entity.
- 1.13. **Standard Drop**. An aerial connection extending no more than 150 feet from the potential Subscriber's demarcation point to the point nearest the property line on the public Right-of-Way from which Cable Service can be provided to that Subscriber most economically.

- 1.14. **PEG Channel**. Any capacity on a Cable System set aside by a Franchisee for PEG Use, including by way of example and not limitation, a digital PEG Channel or an analog PEG Channel.
- 1.15. **School**. Any accredited public or private, non-profit primary and secondary schools located within the City.
- 1.16. **Subscriber**. Any Person lawfully receiving Cable Service from the Franchisee.
- 1.17. **Subscriber Network**. Fibers, coaxial cables and the electronic devices required to activate the same that are used primarily in the transmission of Cable Service to residential Subscribers.
- 1.18. **Transfer**. Shall Mean any transaction in which:
- 1.18.1. The Cable System is sold or assigned;
 - 1.18.2. There is any change, acquisition, or transfer of control of the Franchisee or its direct or indirect parents, whether by merger, consolidation, sale of assets or ownership interests, or by any other means. A Transfer shall be deemed to have occurred whenever there is a change, acquisition or conveyance of control of a general partner, of more than a fifty percent (50%) ownership in the Franchisee or its direct or indirect parents by any entity, or a group of entities acting in concert. However, a Transfer also occurs whenever there is a change in actual working control, in whatever manner exercised, over the affairs of the Franchisee or its direct or indirect parents.
 - 1.18.3. The rights and/or obligations held by the Franchisee are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly to another party.

SECTION 2

Grant of Franchise; Limits and Reservations.

2.1. **Grant**. A Cable System Franchise is hereby granted to Franchisee, subject to the conditions set forth in this Agreement and all Applicable Laws. This Franchise grants the right, subject to conditions, to construct, operate and repair a Cable System in, over, along and under City Rights-of-Way within the City of Elkins commencing on the Effective Date of the Franchise through and including

December 14, 2027, unless terminated prior to that date in accordance with the Franchise or Applicable Law.

2.2. Term. The Franchise and the rights, privileges and authority hereby granted shall be for an initial term of five (5) years, commencing on the Effective Date of this Franchise as set forth in subsection 14.5.

2.3. Relation to Other Provisions of Law.

2.3.1. The Franchise issued by the City is subject to, and Franchisee must exercise all rights granted to it in accordance with Applicable Law. This Franchise does not confer rights upon the Franchisee other than as expressly provided herein, or as expressly provided under other Applicable Law. No privilege or power of eminent domain is bestowed by this grant. All rights and powers of the City now existing or hereafter obtained are reserved except as expressly provided to the contrary in the Franchise. Nothing passes by implication under this Franchise. Subject to the foregoing, Franchisee shall provide the Cable Service required hereunder throughout the Franchise Term and any holdover term and shall make any Cable Service it provides over its Cable System available to all entities in its Franchise Area, subject to the line extension provisions herein.

2.3.2. This Franchise and all rights granted under the Franchise are subject to the City's police and other powers. However, once the Franchise grant is effective, this Franchise is a contract and except as to those changes which are the result of the City's exercise of its police and other powers, neither party may take any unilateral action which materially changes the explicit mutual promises in this contract.

2.3.3. The Franchise shall be interpreted to convey limited rights and interests only as to those City Rights-of-Way in which the City has an actual interest and only to the extent and for the purposes set out in the Franchise. The grant of the Franchise is not a warranty of title or interest in any Right-of-Way; it does not provide the Franchisee any interest in any particular location within the Rights-of-Way. The issuance of the Franchise does not deprive the City of any powers, rights or privileges it now has or may later acquire in the future to use, perform work on, construct, operate or repair facilities or systems in, or regulate or control the use of the Rights-of-Way.

- 2.3.4.** The Franchise issued and the franchise fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge or tax. Without limiting the foregoing, the City, among other things, does not waive the requirements of, or the Franchisee's duty to obtain, all applicable permits, and to comply with the conditions thereof; to comply with zoning laws; or to comply with codes, ordinances and regulations governing the construction of the Cable System.

2.4. Interpretation and Conflicts.

- 2.4.1.** In the event of a conflict between the Cable Ordinance and this Agreement as of its Effective Date, the Agreement shall control except where expressly provided otherwise in the Agreement.
- 2.4.2.** The provisions of this Franchise shall be liberally construed in favor of the public interest in order to effectuate its purposes.
- 2.4.3.** This Franchise is for the construction, operation and repair of a Cable System within the rights of way of the City. The franchise shall not act as a bar to the City's generally applicable management authority of the Rights-of-Way, including, but not limited to that described in Sections 2.3.1-2.3.4 of the Franchise, to the extent not preempted by state or federal law.

2.5. Affiliates Must Comply. Any Affiliate or joint venture or partner of the Franchisee involved in the management or operation of the Cable System in the City that would constitute a cable operator of the Cable System is subject to the limitations of, and shall comply with the terms and conditions of the Franchise. The Franchisee shall be fully liable for any act or omission of an Affiliate that controls the Franchisee or is responsible in any manner for the management of the Cable System that results in a breach of this Franchise or a violation of the Cable Ordinance, as if the act or omission was the Franchisee's act or omission.

2.6. Relation to Prior Franchise. As of the Effective Date of this Franchise, the franchise previously held by the Franchisee is superseded and of no further force and effect. Subject to any applicable statute of limitations, nothing in this paragraph shall be deemed to release the Franchisee from any liability arising under the prior franchise during the time it was in effect. Franchisee shall provide proof satisfactory to the City that it will continue to provide the same or greater indemnity required under the prior franchise, and that it continues to maintain adequate insurance for injuries to persons or property that may have occurred during the prior franchise

term, subject to any limitations to which the City may have agreed in settlement of claims arising under the prior franchise.

2.7. Validity. Both parties waive any claim or defense that any provision of this Franchise, or any provision of the Cable Ordinance is unenforceable or otherwise invalid or void. Neither party waives the right to challenge the validity of any other Applicable Law.

2.8. Effect of Franchise Acceptance. By accepting the Franchise, the Franchisee:

- 2.8.1.** Acknowledges and accepts the City's legal right to issue and enforce the Franchise;
- 2.8.2.** Accepts and agrees to comply with each and every provision of this Franchise; and
- 2.8.3.** Agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

2.9. Franchisee Bears Its Own Costs. Unless otherwise expressly provided in this Franchise, all acts that the Franchisee is required to perform under this Franchise or the Cable Ordinance must be performed at its own expense.

2.10. No Waiver.

- 2.10.1.** No course of dealing between a Franchisee and the City, or any delay on the part of the City or Franchisee in exercising any rights shall operate as a waiver of any such rights, except to the extent expressly waived; *provided that*, nothing in this section is meant to alter any renewal protections afforded by 47 U.S.C. §546(d).
- 2.10.2.** Waiver of a breach of this Franchise is not a waiver of any other breach, whether similar or different from that waived. Neither the granting of the Franchise nor any provision herein shall constitute a waiver or bar to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain.

2.11. Severability. In the event that a court or agency or legislature of competent jurisdiction acts or declares that any nonmaterial provision of this Franchise is unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Franchise, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that a court or agency or legislature of competent and controlling jurisdiction acts so that any material provision of this Agreement is unenforceable according to its terms, or is otherwise void, the parties agree to immediately enter into negotiations in good faith to restore the relative burdens and benefits of this Franchise, consistent with Applicable Law. If the parties are unable to agree to a modification of this Franchise within 60 days, either party may with 90 days prior notice, terminate or shorten the Franchise term; or resort to litigation to seek any available equitable relief; or do both. However, if a party does seek equitable relief before the effective date of termination or shortening, the termination or shortening will be stayed pending the resolution of the judicial proceedings. Each party agrees to participate in up to sixteen hours of negotiation during the 60-day period. Notwithstanding the foregoing, if a party believes a provision is not material, it must so notify the other party within 14 days of a request by such other party that it enter into negotiations, or else the materiality claim is waived. The obligation to negotiate is not tolled, and the parties must discharge their negotiation responsibility notwithstanding the dispute as to materiality. The remedies provided for herein do not prevent a party from contending that a particular provision is enforceable, or foreclose any remedies if a provision is enforceable.

2.12. No Recourse. Without limiting such immunities as the City or other Persons may have under Applicable Law, and to the maximum extent permitted by State law, Franchisee will have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out the construction, operation or repair of its Cable System, or the activities of the City or any entity authorized by the City to use Rights-of-Way or other public property.

2.13. Effect of Change in Law. Subject to Section 2.11, in the event that State or Federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, that such laws, rules or regulations validly acted to preempt such provision. In the event such State or Federal law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

SECTION 3

Transfer

3.1. Procedures for Transfer. Franchisee agrees that the rights granted to it by the City are personal in nature and held in trust. No Transfer may occur without the prior consent of the City, which shall not be unreasonably withheld. An application for a Transfer, containing all information required under Applicable Law, must be filed before a request for a Transfer will be considered by the City and such application will be considered in accordance with the provisions of Applicable Law. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness.

SECTION 4

Indemnification and Insurance

4.1. Indemnification. Without limiting and expressly preserving all immunities that the City has under Applicable Law, and to the maximum extent permitted by Applicable Law, the Franchisee shall, by acceptance of the Franchise granted herein, hold harmless, indemnify and defend the City, its officers, boards, commissions, agents, and employees for all claims for injury to any Person or property caused by the negligence of Franchisee, or resulting from any condition or act of omission or commission or error in judgment of Franchisee, in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify, defend and hold the City, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence of Franchisee, or the result of any condition or act of omission or commission or error in judgment of Franchisee, arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System; provided, that the City shall give the Franchisee written notice of Franchisee's obligation to indemnify and defend the City within ninety (90) days of receipt of a claim or action pursuant to this section. The City's failure to provide such notice, however, shall not nullify the Franchisee's obligation to indemnify and defend the City. In the event any such claim arises, the City shall tender the defense thereof to the Franchisee, the Franchisee shall be obligated pursuant to the terms herein to accept said tender, and the Franchisee shall have the right to defend, settle or compromise any claims arising hereunder, at its own expense. If the City determines in good faith that its interests cannot be represented by the Franchisee, the Franchisee shall be excused from any non-monetary obligation to represent the City; provided, however, the decision of the City to obtain its own representation shall not serve to nullify the Franchisee's monetary obligation to indemnify the City for the cost of its defense and any amounts for

which the City is found liable. Notwithstanding the foregoing, the Franchisee shall not be obligated to indemnify the City for any damages, liability or claims resulting from the City's use of the Cable System, including any PEG channels. The indemnity provided for herein shall be deemed in addition to and in no way a limitation upon the City's and its agents' right of common law indemnification from Franchisee.

4.2. Insurance.

- A. The Franchisee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000.00 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000.00 General Aggregate
Auto Liability, including coverage on all owned, non-owned hired autos	\$1,000,000.00 per occurrence C.S.L.
Umbrella Liability	\$1,000,000.00 per occurrence C.S.L.

- B. The City shall be added as an additional insured to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- C. The Franchisee shall furnish the City with current certificates of insurance evidencing such coverage upon request.

SECTION 5 **Service Obligations**

5.1. No Discrimination. The Franchisee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex.

5.2. Privacy. The Franchisee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

5.3. No Limitation. Nothing herein prevents the City from adopting additional non-discrimination and privacy requirements by ordinance, resolution or regulation, which provisions, if otherwise permitted under Applicable Law, shall apply to Franchisee.

SECTION 6 **Service Availability**

6.1. Provision of Service. The Cable System, as constructed as of the date of the passage and final adoption of this Agreement, substantially complies with the material provisions hereof. Within the Franchise Area, Franchisee shall provide Cable Service upon request for no more than the prevailing installation charge, but without charging for line extension where there is a minimum density of twenty-five (25) unserved residential units per aerial or underground mile. Where these standards are not satisfied, service will be extended upon request for no more than the then-prevailing installation charge if the Person or Persons, other than those entitled to a free drop, requesting service contract to pay a pro rata share of the cost of extending the plant to the point nearest the potential Subscriber's property line on the public Right-of-Way from which Cable Service can be provided most economically to that potential Subscriber. For new subdivisions, the Franchisee shall extend service at no charge to the developer if the planned density exceeds the minimum levels, or for a pro rata share of costs where it does not; provided that where construction will be underground, this sentence will not apply unless the developer provides reasonable advance notice so that the Franchisee can participate in joint trenching.

6.2. Economic Redlining. Franchisee shall extend its Cable System to low income areas at least as quickly as it is extended to higher income areas.

6.3. Drops; Prevailing Charges. In addition, except as lawful rate orders may otherwise provide, and except with respect to those locations which are entitled to free drops:

6.3.1. The "then-prevailing installation charge" is the lowest lawful charge that applies at any given time to a particular class of users. If Applicable Law permits, nothing in this Franchise prohibits Franchisee from establishing separate charges for separate classes of drops, such as, for example, underground and aerial drops.

6.3.2. Where the drop to a Subscriber is not a Standard Drop, in addition to the then-prevailing installation charge for Standard Drops, Franchisee may charge the Subscriber the difference between Franchisee's cost of

installing a Standard Drop and the actual additional cost of installing a drop from the nearest tap, or if closer, the point to which Franchisee could be required to extend its Cable System.

- 6.4. **Subscriber Option for Underground Drops.** Where the Franchisee may locate a drop above ground, but a potential Subscriber requests that the cable drop be placed underground, the Franchisee shall locate the drop underground, but in addition to the then-prevailing installation charge may charge the Subscriber for the actual difference in cost of installing the underground drop, rather than an aerial drop. An existing Subscriber may require the Franchisee to relocate an existing aerial drop underground, and Franchisee may charge the requesting Subscriber for the cost of relocating the drop underground.

SECTION 7

Construction and Technical Standards

- 7.1. **Compliance with Codes.** Without limiting Section 2, Franchisee agrees that at all times it will satisfy the following, minimum conditions:
- 7.1.1. **Minimum Conditions.** The construction, operation, and repair of the Cable System will be in accord with all Applicable Law. At a minimum, Franchisee shall comply with construction procedures approved by the City; Institute of Electrical and Electronics Engineers standards, the National Electric Code, the National Electrical Safety Code and any other applicable safety codes. The most stringent applicable code or standard will apply in the event of any conflict (except insofar as that standard, if followed, would result in a system that could not meet requirements of Federal, State, or local law). Franchisee will employ reasonable care at all times, within the meaning of Applicable Law, and will install and maintain in use commonly accepted methods and/or devices to reduce the likelihood of damage, injury, or nuisance to the public. The construction, operation, and maintenance of the Cable System shall be performed by experienced and properly trained maintenance and construction personnel.
- 7.1.2. **Compliance with Laws.** Franchisee must install, locate, relocate and remove its Cable System in accordance with the Franchise and all other Applicable Laws, including City codes as the same may be amended from time to time. Franchisee shall not place or maintain its Cable System, including any poles or other structures, in Public Rights-of-Way or on private property except in strict accordance with the requirements of the Franchise and all other Applicable Laws.

7.1.3. All of Franchisee's plant and equipment, including but not limited to the antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

7.2. Pole attachments and conduits. For I-NET and PEG Uses, pole and conduit space owned by Franchisee will be provided at no charge. Pole and conduit space will be provided to the City for all its other uses at the prevailing rate charged by regulated utilities for similar pole and conduit space in the City of ELKINS, and under prevailing terms and conditions under which access is provided to similar pole or conduit space by such regulated utilities. In addition, whenever underground conduit is to be placed by the Franchisee, the Franchisee shall notify the City 90 days in advance and if requested, and if the same shall be in compliance with applicable purchasing laws, the Franchisee shall lay conduit for the City at the cost of the conduit, plus (where boring is involved), the incremental cost of the boring. Whenever underground conduit is to be placed by the City, the City will, if requested by the Franchisee, permit the Franchisee to lay conduit at the Franchisee's cost.

7.3. Notice of use. Franchisee will notify the City when it enters into an agreement for use of its poles and conduits.

7.4. Contractors and Subcontractors. Franchisee shall ensure that any contractor or subcontractor used for work on construction, operation, or repair of the Cable System is properly licensed under laws of the State and all applicable local ordinances. Each contractor or subcontractor shall have the same obligations with respect to its work as Franchisee would have under this Franchise and Applicable Law if the work were performed by Franchisee. The Franchisee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with this Franchise and Applicable Law, shall be responsible for all acts or omissions of contractors or subcontractors, and shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor. This section is not meant to alter the tort liability, if any, of Franchisee to third parties, or of any contractor or subcontractor to third parties or to Franchisee. Franchisee shall institute procedures adequate to ensure that the work performed by its contractors and subcontractors complies with the requirements of this Franchise and Applicable Law.

7.5. Safety. Franchisee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

7.6. Network Technical Requirements. The Cable System must meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable standards, as amended from time to time, *provided that*, nothing in this provision is intended to permit the City to exercise any authority that it is prohibited from exercising under applicable federal law.

7.7. Future Upgrades. It is Franchisee's responsibility to make such improvements to its Cable System as are necessary so that the Cable System performs as promised as Subscribers to services are added. In addition, it is Franchisee's responsibility to make such commercially practicable improvements to its Cable System throughout the Franchise term to ensure that Subscribers are able to obtain advanced Cable Service, and so that services can be added throughout the Franchise term. Commercial practicability may be determined by examining the improvements being made and the services being rolled out on similar cable systems within West Virginia.

7.8. Inspection and Testing. The City shall have the right to inspect the Cable System to ensure compliance with this Franchise, and applicable provisions of local, State and Federal law. The City (i) may require the Franchisee to perform tests based on the City's investigation of Cable System performance or on Subscriber complaints; and (ii) may require Franchisee to prepare a report to the City on the results of those tests, including a statement identifying any problems found and the actions taken to correct those problems. This provision is subject to any limitations on the City's authority under Applicable Law.

7.9. FCC-Mandated Testing. Franchisee shall, if requested, notify the City in advance of conducting any Proof-of-Performance test required by the FCC, so that the City may observe the testing. Upon request, the City shall be provided the test results and any supporting documentation regarding the tests and testing equipment and procedures.

SECTION 8

Conditions on Street Occupancy

8.1. General Conditions. Without limiting Section 2, Franchisee agrees that at all times it shall, as a minimum condition of its use of the rights of way, comply with the requirements of this Section 8 and that Franchisee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the City.

8.2. Underground Construction. The facilities of the Franchisee shall be installed underground in those service areas where existing telephone facilities of

a provider other than the Franchisee or its affiliates and electric utility local distribution facilities are both underground at the time of system construction. In areas where either of such telephone or electric utility facilities are installed aerially at the time of system construction, the Franchisee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the City, the Franchisee shall likewise place its facilities underground. Nothing in this section shall preclude the Franchisee from receiving funds for relocation for which it is eligible.

8.3. Construction Codes and Permits. Franchisee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the service area. The City shall cooperate with the Franchisee in granting any permits required, providing such grant and subsequent construction by the Franchisee shall not unduly interfere with the use of such Streets. The Franchisee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Cable System in the service area.

8.4. System Construction. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Franchisee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Franchisee shall be placed in such a manner as not to interfere with the usual travel on such public way.

8.5. Restoration of Public Ways. The Franchisee shall repair any disturbance or damage to public property or private property caused by Franchisee's construction, operation or repair of the Cable System promptly and in compliance with such standards and deadlines as may be specified by the City in writing. Franchisee agrees to compensate any entity whose person or property is damaged by Franchisee, or any contractor, subcontractor or agent of Franchisee in the course of the construction, operation or repair of the Cable System where the property is not fully restored by Franchisee to a condition as good as or better than existed before the damage.

8.6. Removal in Emergency. In an emergency, or where the Cable System creates or is contributing to an imminent danger to public health, safety, or property, the City may remove, relay, or relocate any or all parts of the Cable System without prior notice; however, the City will make reasonable efforts to provide prior notice.

8.7. Tree Trimming. Franchisee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the supervision of the City, and any regulations that the City may adopt regarding the same.

8.8. Relocation for Government. Except as provided below, Franchisee will protect, support, temporarily disconnect, relocate, or remove any of its property at the time and in the manner required by the City or any other governmental entity for any governmental purpose.

8.8.1. Except in an emergency, the City will provide written notice describing where the work is to be performed at least thirty (30) days before the deadline for performing the work; Franchisee may seek an extension of the time to perform the work where it cannot be performed in a week even with the exercise of due diligence, and such request for an extension will not be unreasonably refused.

8.8.2. The Franchisee may abandon any property in Public Rights-of-Way that is in place upon written notice to the City and separate notice to the Public Works Director, unless the City determines, in the exercise of its reasonable discretion exercised within ninety (90) days of the date the required written notices are received, that the safety, appearance, functioning or use of Public Rights-of-Way and facilities in Public Rights-of-Way will be adversely affected. Abandonment shall be in a manner acceptable to the City Engineer.

8.9. Relocation for a Third Party.

8.9.1. If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another Person authorized to use Public Rights-of-Way (other than entities covered by Section 8.8 above), Franchisee will, after thirty (30) days' advance written notice, take action to effect the necessary changes requested by such Person.

8.9.2. Unless the matter is governed by a valid contract or Applicable Law, or unless the Franchisee's Cable System was improperly installed and if installed properly, the removal, relocation or relaying would be unnecessary, the reasonable cost of removal, relaying, or relocation will be borne by such Person requesting the removal, relaying, or relocation.

8.9.3. The City may direct Franchisee to remove, relay, or relocate its facilities pending resolution of a dispute as to responsibility for costs

upon posting of a bond by such Person requesting such removal, relaying or relocation in the amount of Franchisee's estimated costs.

- 8.9.4.** Upon the request of a Person holding a valid permit, other than an entity covered by Section 8.8 above, Franchisee will temporarily raise or lower its wires to allow buildings or other objects to be moved. The requesting Person will pay for any expense associated with such temporary removal or raising or lowering of wires. Franchisee will have the authority to estimate the reasonable material and labor costs and require payment of the same in advance. The Franchisee will be given not less than thirty (30) days advance notice to arrange for such temporary wire changes.

8.10. Emergency Alert System. Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC and the State of West Virginia, including the current state EAS Plan, in order that emergency messages may be distributed over the Cable System.

SECTION 9 **Service and Rates**

9.1. Phone Service. The Franchisee shall maintain a local or toll free telephone number and a phone service such that complaints and requests for repairs or adjustments may be received at any time and operate a local office in or near the service area.

9.2. Notification of Service Procedures. The Franchisee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Franchisee's name, address and local or toll free telephone number. Franchisee shall give the City and Subscribers at least thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

9.3. Rate Regulation. Franchisee's rates and charges are subject to regulation by the City, to the extent not prohibited by Applicable Law. If and when exercising rate regulation, the City shall abide by the terms and conditions set forth by the state and FCC.

9.4. Continuity of Service. It is the right of each Subscriber in the Franchisee's Franchise Area to receive all available Cable Service from the Franchisee as long as the Subscriber's financial and other obligations to the Franchisee are satisfied.

9.4.1. The Franchisee shall use best efforts to ensure that all Subscribers receive continuous uninterrupted Cable Service. At the City's request, the Franchisee shall operate the Cable System for a temporary period (the "transition period") following the termination of its Franchise or any transfer as necessary to maintain Cable Service to Subscribers and shall cooperate with the City to assure an orderly transition from it to another entity. The transition period shall be no longer than the reasonable period required to select another entity and to build a replacement Cable System and shall not be longer than thirty-six (36) months, unless extended by the City for good cause. During the transition period, the Franchisee will continue to be obligated to comply with the terms and conditions of this Franchise and Applicable Laws and regulations and will be deemed to have the necessary authorization required from the City to enable it to provide Cable Service.

9.4.2. Rights Upon Franchise Termination or Revocation. If the City revokes the Franchise or the Franchise otherwise terminates, the City shall have the following rights, in addition to the rights specified in this Franchise or under Applicable Law:

9.4.2.1. The City may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense, subject to any right of abandonment that may be provided for under Applicable Law.

9.4.2.2. Subject to Applicable Law, the City, by City Council resolution, may acquire ownership or effect a Transfer of the Cable System at fair market value, or, if the Franchise terminates or is revoked in accordance with Applicable Law at an equitable price. The terms "equitable price" and "fair market value" shall be interpreted in accordance with 47 U.S.C. § 547.

SECTION 10

Franchise Fee

10.1. Amount of Fee. Franchisee shall pay the City a Franchise Fee in an amount equal to five percent (5%) of Gross Revenues derived from the operation of the Cable System to provide Cable Service. The Franchise Fee is not a payment in lieu of any tax, fee, or other assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services), consistent with 47 U.S.C. §542(g)(2). However, to the extent required by law, payments to the Public Service Commission of West Virginia under Chapter 24D of the West Virginia Code for subscribers in the City shall be offset against amounts owed to the City under this section. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Franchisee chooses, consistent with Federal law.

10.2. Payment of Fee. Payment of the fee due the City shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter. The Franchisee may use electronic funds transfer to make any payments to the City required under the Franchise. The City shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges. To the extent that Franchisee or its Affiliates offer bundles of Cable and non-Cable Service at discounted rates, fees attributable to Cable Service will be based on a pro rata comparison of charges that apply to persons who purchase the Cable Service and non-Cable Service from Franchisee separately; and if that is not practicable (because some of the bundled services are not offered separately, or are not offered separately as a realistic service offering) payment shall be based on charges that apply to persons who purchase only cable service.

10.3. Accord and Satisfaction. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise Fee or for the performance of any other obligation of the Franchisee.

10.4. Payment Records. The City may, from time to time, but not more often than every three (3) years, and upon reasonable advance written notice, inspect and audit any and all books and records to determine whether Gross Revenues and Franchise Fees have been accurately computed and paid. In addition to paying all fees owed plus interest, in the event that the City reviews the Franchisee's franchise fee payments, and finds that the Franchisee has underpaid the fee owed for any year in an amount exceeding five percent (5%) of the franchise fees actually paid or Ten Thousand Dollars (\$10,000), whichever is less, Franchisee shall pay the reasonable cost of the City's review.

10.5. Limitation on Recovery. In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, Franchisee shall pay an interest charge, computed from such due date, at the annual rate of one percent over the prime interest rate. The period of limitation for recovery of any franchise fee payable hereunder shall be as provided under Applicable Law.

SECTION 11 **Records, Reports and Maps**

11.1. Reports Required. The Franchisee's schedule of charges, contract or application forms for regular Subscriber service, policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Franchisee's policy in connection with its Subscribers shall be filed with the City upon written request. All changes in the Franchisee's schedule of charges, channel line-up and policies as mentioned herein shall be provided to the City without request. Upon written request by the City, Franchisee shall provide a copy of reports for monitoring the Franchisee's compliance with the terms of this Franchise and Applicable Law.

11.2. Records Required.

The Franchisee shall at all times maintain:

11.2.1. A record of all complaints as required by West Virginia Code §24D-1-19(a) and as such statute may be amended from time to time.

11.2.2. A full and complete set of as-built plans, records and strand maps showing the location of the Cable System. Upon written request by the City, copies of strand maps shall be provided to the City in a mutually agreed upon format consistent with that used by the City.

11.2.3. The Franchisee shall maintain records sufficient to comply with the requirements of Applicable Law, and to show compliance with all the provisions of this Franchise.

11.3. Inspection of Records. Franchisee agrees that it will collect and make available books and records for inspection and copying by the City in accordance with the terms of this Agreement.

11.4. Time for Production. Books and records shall be produced to the City at City Hall, or such other location as the parties may agree. If Franchisee objects to a request for books and records, it must nonetheless produce the books and

records requested, unless the City agrees that they need not be produced, or a court of competent jurisdiction rules otherwise. If documents cannot be copied or moved because (i) they are too voluminous; (ii) of security reasons; or (iii) the requested records contain trade secrets, then the Franchisee may request that City inspection of such records take place at some other location mutually agreed to by the City and the Franchisee, provided that:

11.4.1. The Franchisee must make necessary arrangements for copying documents selected by the City after its review; and

11.4.2. Franchisee must pay all reasonable travel and additional copying expenses incurred by the City (above those that would have been incurred had the documents been produced in the City) in inspecting those documents or having those documents inspected by its designee.

11.4.3. The parties agree that any amounts paid pursuant to this Section 11.4 are not a franchise fee within the meaning of 47 U.S.C. § 542 and fall within one of the exceptions listed in 47 U.S.C. §542(g)(2).

11.5. Uses of System. Without limiting the foregoing, upon request, Franchisee must advise the City of all services it provides via the Cable System (the term "services" for purposes of this section, would include, without limitation, the provision of dark fiber), for entertainment and other purposes, such as data transmission, local area networks, and voice transmission; and to the extent known, the services that are provided by third parties via the Cable System.

11.6. Retention of Records; Relation to Privacy Rights. Franchisee shall take all steps required, if any, to ensure that it is able to provide the City all information which must be provided to the City or that may be requested by the City under Applicable Law or this Franchise, including by providing appropriate Subscriber privacy notices. Nothing in this section shall be read to require Franchisee to violate 47 U.S.C. § 551 or other Applicable Law governing privacy. Franchisee shall be responsible for redacting any data that State or Federal law prevents it from providing to the City. Financial records necessary to establish compliance with this agreement shall be kept for at least five (5) years, other records shall be kept for at least three (3) years except that service call logs may be retained for two (2) years, so long as the information contained therein is reflected in other documents.

11.7. Confidentiality of Certain Information. The City agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Franchisee makes the City aware of such confidentiality, and to the extent that the City is permitted to do so by Applicable Law. If the City

believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Franchisee in advance in writing so that Franchisee may take appropriate steps to protect its interests. To the extent permitted by State and federal law, if the Franchisee takes appropriate steps to protect its interests in maintaining such information as confidential, the City agrees that it shall deny access to any of Franchisee's books and records marked confidential, as set forth above, to any Person.

SECTION 12

Community Programming

12.1. Preservation of Existing Benefits. Franchisee shall continue to provide and maintain all existing equipment, facilities and other support for PEG use that it was providing prior to and upon the effective date of this Franchise, until and unless the City notifies Franchisee that such support is no longer necessary.

12.2. Provision of Channel Capacity for PEG Use.

12.2.1. Franchisee shall provide up to three channels for PEG use upon request. The City is deemed to have requested any PEG channel currently being provided in the City. PEG capacity used for video programming may not be used to transmit "commercial matter" as that term is defined and interpreted under Section 73.670, Note 1, of the FCC rules, 47 C.F.R. §73.670. PEG Channel capacity may not be leased to third parties for delivery of commercial matter, or for delivery of video programming that a Subscriber is charged a separate fee to receive (over and above the fee that Franchisee charges for the service tier with which the signal is provided); but nothing in this sentence prevents the levy of a fee by the City to defray costs that the City may incur in connection with the PEG channels, subject to Applicable Law. By way of example and not limitation, the parties do not intend to limit sponsorship announcements comparable to those that might be carried on a noncommercial broadcast station, or to prevent Schools from charging course fees, and then delivering the course via the PEG Channels; or to prevent solicitations of financial support for the provision of PEG Channels by the entities responsible for managing those channels.

12.2.2. At any time after Franchisee begins offering Cable Service on-demand the City may request the company to investigate whether capacity could be made available for PEG use on demand. If it is financially and technically feasible to do so, Franchisee will make on-demand capacity available.

12.3. Timing for Provision of Channels. With respect to the channel capacity required by Section 12.2:

- 12.3.1.** Franchisee shall continue to provide channels it is providing as of the Effective Date of this agreement.
- 12.3.2.** In other cases, within one hundred eighty (180) days of receipt of a written request by the City, the Franchisee shall provide the City with the additional PEG Channels. Franchisee shall have the right to petition the City to recapture any unused portion of the channels. In deciding whether to grant such a petition, the City shall consider the comments and views of the Franchisee and all other interested persons or entities. Upon thirty (30) days written request and demonstration that the channel time recaptured by the Franchisee may be utilized by the City, the Franchisee shall make the channel time available.

12.4. Management of Channels. The City may manage the PEG channels in whole or in part, or designate entities to manage the PEG channels in whole or in part. The City may establish rules for use of PEG capacity, or delegate that authority to an entity responsible for managing a channel.

12.5. Availability of channels.

- 12.5.1.** PEG channel capacity, other than the on-demand channel provided under Section 12.2.2 must be viewable by any Subscriber without the need for obtaining any equipment other than the equipment required for the other services to which the Subscriber subscribes; and shall be provided as part of Basic Service tier, or if there is no basic service tier, as part of the service provided to any Subscriber.
- 12.5.2.** On-demand PEG capacity must be available to any subscriber who receives a digital service from Franchisee without additional charge.
- 12.5.3.** To the extent technically feasible, PEG programming choices shall be displayed on menus in a manner equivalent to the manner commercial programming choices are displayed. It is the responsibility of the entity managing a PEG channel to timely provide information that it wishes to have displayed on the menu.
- 12.5.4.** PEG channel capacity shall be carried on the lowest level of Cable Service. PEG links and channels must be designed so that there is no noticeable deterioration in signal quality or programming as

received from the PEG programmer.. Channels used should be of a quality equivalent to other channels that were carried on the Basic Service tier.

12.6. Channel Location.

12.6.1. Franchisee agrees to use reasonable efforts to locate PEG channels so that they are grouped with the majority of channels a Subscriber receives as part of the lowest level of service offered on the System.

12.6.2. Franchisee shall not change the channel position for any PEG channel required by this Agreement without the City's consent and upon 60 days advanced written notice. The City shall not unreasonably refuse consent to such change.

12.6.3. Franchisee shall pay reasonable expenses associated with a change in the PEG channel positions, up to \$3000 per change

12.7. Free Service to Certain Locations.

12.7.1. Subject to applicable law and FCC regulations, Franchisee shall, without charge, provide the following to each School, municipal and county government building within the City upon request: (i) at least one activated drop and outlet (with signal levels to the ground block comparable to the signal levels provided to multiple dwelling units); (ii) Basic Service (iii) all PEG channels; and (iv) all terminal equipment necessary to receive the services described in this subsection. There will be no charge for the drop at any location where the location to be served is already connected to the cable system or where the location is two hundred (200) feet or less from the public right of way. Where a location is more than two hundred (200) feet from the public right of way, or where the location requires inside-wiring beyond the demarcation point of the drop, the location must agree to pay the actual, additional labor and material cost of providing the drop beyond the first two hundred (200) feet, or for any such inside wiring.

12.7.2. Each location may itself extend service from the drop to additional outlets. Franchisee shall not be responsible for signal leakage or the signal quality at any additional outlet or inside wiring that was not installed by Franchisee. Consistent with federal rules, Franchisee may terminate service to a location where there is a leakage problem until the leakage is repaired. Franchisee shall not be obligated to

repair inside wiring or additional outlets not installed by Franchisee. If a location extends service to multiple drops, the location shall pay for any additional line amplifiers required to deliver the service.

12.8. No Charge for Use. Except as otherwise provided herein, the facilities, equipment and channel capacity provided for PEG Use shall be available at no charge from Franchisee to users, to the City or to any Designated Access Entity.

12.9. Costs Caused by Franchisee. If Franchisee makes changes to its Cable System that necessitate modifications to PEG facilities and equipment (including but not limited to the upstream paths), Franchisee shall at the same time provide any additional facilities or equipment necessary to implement such modifications so that PEG facilities and equipment may be used and operated as intended in this Agreement.

12.10. Support Not A Franchise Fee. The parties agree that any cost to the Franchisee associated with providing any capital support for PEG use required under this Franchise, shall not constitute a Franchise fee, within the meaning of 47 U.S.C. § 542 and shall be deemed to fall within one or more of the exceptions listed in 47 U.S.C. § 542(g)(2).

12.11. Costs Not Franchise Fees. Any cost to the Franchisee associated with providing any capital support for PEG Use required under this Franchise (excluding the provision of the I-NET and support therefor), are not a Franchise Fee within the meaning of 47 U.S.C. §542, and fall within one or more of the exceptions listed in 47 U.S.C. § 542(g)(2).

12.12. Limitations on Use. The Cable Service provided pursuant to this Section shall not be used for commercial purposes.

SECTION 13

Performance Guarantees and Remedies

13.1. Bond or Letter of Credit.

13.1.1. Franchisee shall file with the City, and at all times thereafter, maintain in full force and effect during the continuance of this franchise, at the Franchisee's sole expense, a corporate surety bond or letter of credit in a form acceptable to and approved by the City in the amount of \$25,000.00.

13.1.2. The bond or letter of credit shall:

13.1.2.1. Secure the faithful performance of all work required by the Franchise;

13.1.2.2. Be sufficient to provide for restoration of the Public Rights-of-Way and other property that may be affected by the construction, given the scope and nature of the work proposed.

13.1.3. The bond or letter of credit shall provide that, in the event Franchisee fails to comply with its obligations under the Franchise or Applicable Law, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Franchisee, or the cost of completing or repairing the Cable System construction, upgrade, or other work in the Public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond or letter of credit.

13.1.4. The performance bond or letter of credit shall provide that it shall be forfeited to the City under following conditions:

13.1.4.1. the Franchisee abandons the Cable System; or

13.1.4.2. the Franchise is revoked for cause.

13.1.5. The performance bond shall be issued by a surety permitted to do business in West Virginia and shall contain the following endorsement: "This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

13.2. Material Term. The required bond or letter of credit is a material term of this Franchise.

13.3. Revocation or Termination of Franchise. In addition to all other rights of the City under this Franchise, the City shall subject to federal law, have the right to revoke or shorten the term of the Franchise for material violation of the terms of this Franchise and for any of the other reasons specified in West Virginia Code §24D-1-10.

13.3.1. Notice of Violation. If the City believes that the Franchisee has not complied with the terms of the Franchise, the City shall first informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem, the City shall notify the Franchisee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

13.3.2. Franchisee's Right to Cure or Respond. The Franchisee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the City, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

13.3.3. Public Hearing. If the Franchisee fails to respond to the Violation Notice received from the City, or if the default is not remedied within the cure period set forth above, the City shall schedule a public hearing if it intends to pursue action to seek correction of the violation or to take further action; including possible revocation. The City shall provide the Franchisee at least thirty (30) days prior written notice of such hearing specifying the time and place of such hearing. The Franchisee and other interested parties shall have an opportunity to submit data, views or argument orally or in writing for the record of the hearing. The public hearing shall be on the record and a written transcript shall be made available to the Franchisee within ten (10) business days. The City shall determine if the Franchisee has committed a violation and shall enter a written decision. Nothing in this Franchise prevents Franchisee from seeking review of the City's decision in a court of competent jurisdiction.

13.3.4. Enforcement. Subject to Applicable Law, in the event the City, after the hearing set forth in subsection 13.3.3 above, determines that Franchisee has materially violated any provision of the Franchise, the City may, in addition to the remedies set forth in Chapter Twenty-Four D of the West Virginia Code:

13.3.4.1. Revoke the franchise; or

13.3.4.2. Seek appropriate relief from a court or agency of competent jurisdiction under this franchise or Applicable Law.

13.3.5. Upon revocation of the Franchise, Franchisee shall have the rights provided under Section 9.4.2.

13.4. Remedies Cumulative. All remedies under the West Virginia Cable Television Law and this Franchise are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of penalties relieve the Franchisee of its obligations to comply with its Franchise. Remedies may be used singly or in combination; in addition, the City may exercise any rights it has at law or equity. Except that, the City is not entitled to recover damages for the same injury under two separate sections where doing so would result in a double recovery.

13.5. Relation to Insurance and Indemnity Requirements. Recovery by the City of any amounts under insurance, the bond, the letter of credit, or otherwise does not limit the Franchisee's duty to indemnify the City in any way; nor shall such recovery relieve the Franchisee of its obligations under the Franchise, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

SECTION 14

Miscellaneous Provisions

14.1. Force Majeure. The Franchisee shall not be deemed in default with provisions of its Franchise where performance was rendered impossible by war, acts of terrorism, or riots, civil disturbances, floods or other natural catastrophes beyond the Franchisee's control or the unforeseeable unavailability of labor or materials. The acts or omissions of Affiliates are not beyond the Franchisee's control, and the knowledge of Affiliates shall be imputed to Franchisee. The Franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health, safety and integrity of the Franchisee's employees or property, or the health, safety and integrity of the public, Public Rights-of-Way, public property, or private property.

14.2. Equal Protection.

- 14.2.1** Should the City issue a cable franchise to a Person (the "New Entrant") that permits that New Entrant to provide service on terms and conditions that are materially more favorable, or materially less burdensome than those imposed on Franchisee. Franchisee may notify the City that it wishes to obtain relief from its obligations under this Franchise, which notice must be given within 30 days of the issuance of the Franchise to which Franchisee objects. The notice must identify (a) the reasons why Franchisee believes the Franchise is materially more favorable or materially less burdensome; and (b) identify the sections of the Franchise that must be altered, and the alterations required.
- 14.2.2** If the City has the legal authority to impose equivalent obligations on the New Entrant or to reduce the obligations of Franchisee, it shall grant appropriate relief to Franchisee. As a condition of the relief, City may require Franchisee to satisfy any obligation or legal requirement imposed upon the New Entrant under applicable law or under the New Entrant's franchise. Franchisee must comply with its franchise until and unless relief is granted by the City, or by a court of competent jurisdiction.
- 14.2.3.** If, after the effective date of this Franchise, an entity constructs facilities in the rights of way in the City that it uses to deliver multi-channel video programming equivalent to cable service directly to subscribers, and such entity is not subject to requirements under Applicable Law or an authorization issued by the City, Franchisee shall be relieved of its build out obligations under Section 6 of this Agreement. This section may not be read to apply where the service is provided via an open video system or by a system that offers video carriage on a common carrier basis. This section does not apply to wireless or broadcast systems.
- 14.2.4** This section does not permit Franchisee to recover any money, facilities or equipment from the City, or permit Franchisee to refuse to provide facilities or equipment for which the City pay in whole or in part under this agreement.
- 14.2.5** This section does not apply to entities covered by sections 14.2.1 or 14.2.3 above: (a) in areas annexed after the effective date of this franchise; (b) to the extent that they serve any campus or educational

institution; or (c) in any location not served by Franchisee at the time construction of the system commences.

- 14.2.6** If federal or state law permits an existing Franchisee to opt out of its Franchise, nothing in this section shall be read to prevent the Franchisee from exercising its rights under federal or state law.

14.3. Action of Parties. In any action by the City or the Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

14.4. Notices. All notices, reports or demands required to be given under this Franchise shall be in writing and shall be deemed to be given upon delivery if delivered personally to the person designated below, or on the fifth day following mailing if sent in accordance with the notice requirement of this Section and deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to the City:

City of Elkins
401 Davis Avenue
Elkins, WV 26421
Attn: Mayor

If to the Franchisee :

Altice USA, Inc.
1 Court Square West
Long Island City, NY 11101
Attn: Vice President, Government Affairs

And a courtesy copy to:

Cequel III Communications II, LLC
c/o Altice USA, Inc.
1 Court Square West
Long Island City, NY 11101
Attn: Legal Department

Notwithstanding anything herein to the contrary, regulatory notices from the Franchisee to the City, which are required pursuant to federal and state laws and regulations, may be served electronically upon the City, instead of by mail as described above, to an email address provided by the City.

14.5. Effective Date. The Franchise granted herein will take effect and be in full force from such date of acceptance by Franchisee recorded on the signature page of this Agreement. This Franchise shall expire on December 14, 2027 unless extended in accordance with the provisions of this Agreement or by the mutual agreement of the parties.

[signature page follows]

Considered and approved this _____ day of _____, 2022.

**CITY OF ELKINS,
WEST VIRGINIA**

Signature: _____

Name: _____

Title: _____

Accepted this this _____ day of _____, 2022, subject to applicable federal, state, and local law.

CEQUEL III COMMUNICATIONS II, LLC,

Signature: _____

Name: _____

Title: _____



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	January 19, 2023
Section:	New business
Category:	Ordinance
Agenda Item Name:	Ordinance 310: An Ordinance of the Common Council of the City of Elkins, West Virginia To Amend and Revise Chapter 35: Elections (2nd and final reading)
Recommended By:	Clerk and City Attorney
Summary:	Ordinance approved on 1st reading January 5, 2023 to update city election laws and bring in compliance with City Charter and State Code
Fiscal Impact:	none
Recommendation:	final approval of ordinance
Attachments:	1. Ordinance 310

ORDINANCE 310

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKINS, WEST VIRGINIA, TO AMEND AND REVISE CHAPTER 35: ELECTIONS

WHEREAS, the Charter of the City of Elkins was amended by the Common Council's adaption of Ordinance 276 in 2020 and by referenda in the City Election of March, 2021;

WHEREAS, as a result of the changes to the Charter, it has become necessary to amend and revise Chapter 35: Elections, and concur with the changes in the Charter; and

WHEREAS, the City will hold an election in June, 2023, and the Common Council finds and determines that it would be in the best interest of the City and its Citizens to amend and revise Chapter 35: Elections.

NOW THEREFORE, be it **ORDAINED** and **ENACTED** that the Elkins City Code, Chapter 35: Elections shall be read as follows:

CHAPTER 35: ELECTIONS

Section

- 35.01 Applicability of state law; duties of Council and City Clerk
- 35.02 Designation of chief election official
- 35.03 Voter eligibility
- 35.04 Registration of voters and duty of Clerk to procure registration books
- 35.05 Voting precincts
- 35.06 Candidate filing period
- 35.07 Filing announcement of candidacy; requirements; filing fees
- 35.08 Prohibition against running for two offices
- 35.09 Prohibition against city employees holding office
- 35.10 Withdrawal of candidates
- 35.11 Write-in candidates
- 35.12 Election of Mayor and Council members

- 35.13 Ballot Commissioners; selection; duties generally
- 35.14 Drawing for ballot position
- 35.15 Election Commissioners and Clerks; notice; instructions; vacancies
- 35.16 Compensation of election officials; expenses
- 35.17 Electronic voting systems
- 35.18 Tie votes
- 35.19 Contested elections
- 35.20 Absentee voting
- 35.21 Early voting
- 35.22 Vacancies
- 35.23 Campaign finance
- 35.24 Construction

Charter reference:

Elections, see Char. Article VI

Cross-reference:

Election of City Clerk, see § 32.35

Statutory reference:

Expenses of general elections, see W.Va. Code § 8-5-14

Judicial review of orders of Council relating to city elections, see W.Va. Code § 8-3-16

West Virginia Election Code, see W.Va. Code Ch. 3

§ 35.01 APPLICABILITY OF STATE LAW; DUTIES OF COUNCIL AND CITY CLERK.

The provisions of W.Va. Code Ch. 3 referring to elections, insofar as such provisions can be applied within the city and insofar as not otherwise provided by the city's Charter or this code, shall govern the conduct of city elections.

(Ord. 043, passed 9-21-2006; Ord. 170, passed 7-18-2013; Ord. 234, passed 3-2-2017)

§ 35.02 DESIGNATION OF CHIEF ELECTION OFFICIAL.

The chief election official of the city shall be the City Clerk, who shall perform such other duties as required by ordinance and W.Va. Code Ch. 3.

(Ord. 043, passed 9-21-2006)

§ 35.03 VOTER ELIGIBILITY.

Only persons who are bona fide residents of the city and are registered to vote as provided by law shall be entitled to vote in any municipal election.

(Ord. 043, passed 9-21-2006)

Statutory reference:

Persons entitled to vote, see W.Va. Code § 3-1-3

§ 35.04 REGISTRATION OF VOTERS AND DUTY OF CLERK TO PROCURE REGISTRATION BOOKS.

(A) The registration of voters of city shall be integrated with the system of permanent registration of voters established by the West Virginia Code.

(B) The registration record shall remain in the possession of the Clerk of the County Commission, except for use in municipal elections.

(C) At least one day prior to every municipal election it shall be the duty of the City Clerk to procure from the office of the Clerk of the County Commission the registration records necessary for the conduct of such election.

(D) Such records shall, within ten days after the date of the municipal election, be returned to the office of the Clerk of the County Commission by the City Clerk.

(E) In case of a contested municipal election, the registration record of any challenged voter shall be made available by the Clerk of the County Commission to the municipal Council to determine the contest. Such record shall be returned to the office of the Clerk of the County Commission within a reasonable time after the contest shall have been finally decided.

(Ord. 043, passed 9-21-2006)

Statutory reference:

For corresponding provisions of state law, see W.Va. Code § 3-1-27

§ 35.05 VOTING PRECINCTS.

(A) Voting precincts. There shall be five voting precincts established in the city for the purpose of city elections as defined in the Elkins City Charter.

(B) Polling places. The Chief Election Officer, before each election, shall secure, for each voting precinct in the city, a suitable room or building in which to hold the election and shall cause the same to be suitably provided with heat, light and a sufficient number of booths or

compartments, and furnished with proper supplies for preparing ballots, or at/in which voters may conveniently prepare their ballots, so that in the preparation thereof they may be secure from the observation of others. Such room or building shall be located in such precinct; provided, however, that upon a determination of the Chief Election Officer that a suitable room or building in which to hold the election is not reasonably available in such precinct then the Chief Election Officer may secure a suitable room or building in which to hold the election for such precinct in an adjacent precinct in the city.

(Ord. passed 12-4-1980; Ord. 043, passed 9-21-2006)

Statutory reference:

Designation and arrangement of polling places, see W.Va. Code § 3-1-23

Duty of Council to provide by ordinances for making precincts coincide, as nearly as possible, to the boundaries of precincts established by the county, see W.Va. Code § 3-1-6

§ 35.06 CANDIDATE FILING PERIOD.

(A) The candidate filing period shall commence on the third Monday following the issuance of the call of the election. The candidate filing period shall continue until midnight of the third Friday following the day of its commencement.

(B) Before distributing certificate of announcement filing forms to candidates, the Clerk shall enter the date of drawing for ballot position on the certificate of announcement, in order to meet the requirement that candidates be given notice of the drawing at the time of filing.

(Ord. 043, passed 9-21-2006)

§ 35.07 FILING ANNOUNCEMENT OF CANDIDACY; REQUIREMENTS; FILING FEES.

(A) Any person who is eligible and seeks to hold the office of Mayor or member of Council shall file a certificate of announcement with the City Clerk declaring as a candidate for election to office. The certificate of announcement shall be in a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or some other officer qualified to administer oaths. An incomplete certificate of announcement which lacks essential information may be rejected.

(B) The filing of the announcement with the City Clerk shall be made by the last day of the candidate filing period, and must be received by the Clerk before midnight, Eastern Standard Time, of that day or, if mailed, shall be postmarked before that hour.

(C) Every person who becomes a candidate for election to office in any election shall, at the time of filing the certificate of announcement as required in this section, pay a filing fee as follows:

(1) A candidate for the office of Mayor shall pay a fee of an amount set by Council from time to time; and

(2) A candidate for the office of Council member shall pay a fee of an amount set by Council from time to time.

(Ord. 043, passed 9-21-2006)

§ 35.08 PROHIBITION AGAINST RUNNING FOR TWO OFFICES.

A candidate's name shall not appear on the ballot for any office if the candidate files a certificate of announcement for more than one office and does not formally withdraw from all but one office before the close of the candidate filing period.

(Ord. 043, passed 9-21-2006)

Statutory reference:

For corresponding provisions of state law, see W.Va. Code § 3-5-7(i)

§ 35.09 PROHIBITION AGAINST CITY EMPLOYEES HOLDING OFFICE.

A city employee shall not serve on Council or as Mayor while employed by the city.

(Ord. 043, passed 9-21-2006)

§ 35.10 WITHDRAWAL OF CANDIDATES.

A candidate who files a signed and notarized written statement of withdrawal received by the Clerk not later than eighty-four days before the election shall be removed from the ballot.

(Ord. 043, passed 9-21-2006)

Statutory reference:

For corresponding provisions of state law, see W.Va. Code § 3-5-11

§ 35.11 WRITE-IN CANDIDATES.

Write-in candidates are required to file a certificate of announcement at least 49 days before the election in order to have their votes counted. Also, once they announce the intention to run a write-in campaign, they are required to file campaign financial statements, just as with other candidates. Write-in candidates shall not be required to pay a filing fee.

(Ord. 043, passed 9-21-2006)

Statutory reference:

For corresponding provisions of state law, see W.Va. Code §§ 3-6-4a and 3-6-5

§ 35.12 ELECTION OF MAYOR AND COUNCIL MEMBERS.

(A) On the second Tuesday in June, 2023 and every two years thereafter on the second Tuesday in June, there shall be elected by the qualified voters of the city a Mayor and such other officers as may be provided for in the Charter § 1.04. The Mayor shall hold office for the term of four years, commencing on July 1 after the election and continuing until a successor shall have been elected and qualified.

(B) On the same day mentioned in division (A) above, one member of the Council shall be elected in each ward of the city, who shall hold his or her office for the term of four years, commencing on July 1 after the election and continuing until a successor shall have been elected and qualified.

(C) At the city election to be held in the year 2023, and at each such election held thereafter, the person receiving the highest number of votes cast for the office of Mayor and the person receiving the highest number of votes cast for the office of Council member in each ward shall be elected.

(Ord. passed 12-4-1980; Ord. passed 12-18-1986; Ord. 043, passed 9-21-2006)

§ 35.13 BALLOT COMMISSIONERS; SELECTION; DUTIES GENERALLY.

(A) The City Clerk shall, in consultation with Council, appoint two other Ballot Commissioners. Those appointments shall be made between January 15 and January 30, and they shall be for terms of two years, or until their respective successors are duly appointed and qualified.

(B) The Clerk and two appointees shall constitute the Board of Ballot Commissioners, and the Clerk shall be Chairperson. Together, they shall perform the duties of such Commissioners at all regular and special elections held in the city during their term of office.

(C) The provisions of W.Va. Code Ch. 3 with respect to the duties and responsibilities of Ballot Commissioners, so far as they are applicable, shall apply to city elections.

(Ord. 043, passed 9-21-2006)

Statutory reference:

For corresponding provisions of state law, see W.Va. Code §§ 3-1-2a, 3-1-19, 3-1-20, 3-1-21, 3-1-24, 3-5-10 and 3-6-3

§ 35.14 DRAWING FOR BALLOT POSITION.

(A) Position of candidate names on the ballot shall be determined by a random drawing whenever more than one candidate has filed for the same office. The drawing for ballot

position shall commence at 9:00 a.m. on the fourth Tuesday after the close of the candidate filing period. Should the aforementioned drawing date be a legal holiday then the drawing shall commence at the appointed hour on the first business day immediately thereafter.

(B) Once the drawing has been held, the Ballot Commissioners shall meet to certify the ballot before it is conveyed to the printer.

(Ord. 043, passed 9-21-2006)

Statutory reference:

For corresponding provisions of state law, see W.Va. Code §§ 3-5-13a and 3-6-2(d)(2)

§ 35.15 ELECTION COMMISSIONERS AND CLERKS; NOTICE; INSTRUCTIONS; VACANCIES.

(A) Uniform Election Board. No later than the 49th day before the election, the Council shall appoint a Uniform Election Board, consisting of two Election Commissioners and two poll clerks, to conduct each election in each precinct of the city. At the same time as the appointment of election officials or at a subsequent meeting the Council shall appoint persons as alternates. At the Council meeting immediately preceding the meeting at which the appointments are to be made, the City Clerk, in consultation with the Council members from each ward, shall submit a list of persons proposed for appointment by the Council to serve as election officials in each ward.

(B) Notice. The Clerk shall mail notices to every person appointed as an election official within seven days following appointment. The appointed official must respond within 14 days following appointment and state whether or not they will serve. If the person fails to respond in time, the Clerk appoints a replacement from the alternate list or, after all alternates have been used, any eligible voter.

(C) Instruction of election officials. No person may serve as an election commissioner or poll clerk unless he or she has attended the instructional program required with thirty days before the election. No election officer, upon being so notified to appear for instruction, shall fail without just cause to do so. If any officer does so fail to appear, the Council may appoint some other qualified person and such person, after instruction, shall act in the place of the defaulting officer.

(D) Qualifications. As to qualifications of election officials, the city hereby adopts and will adhere to W.Va. Code § 3-1-28, Election officials; eligibility, suspension of eligibility.

(E) Oaths. As to oaths to be administered to election officials, the city hereby adopts and will adhere to W.Va. Code § 3-1-30a, Oaths of election commissioners and poll clerks, substitution of persons.

(Ord. 043, passed 9-21-2006)

Statutory reference:

For corresponding provisions of state law, see W.Va. Code §§ 3-1-30, 3-1-46, 3-4A-14

§ 35.16 COMPENSATION OF ELECTION OFFICIALS; EXPENSES.

(A) Each Ballot Commissioner shall be allowed and paid a sum, to be fixed by the Council, not exceeding an amount set by Council from time to time for each day he or she shall serve as such, but in no case shall a Ballot Commissioner receive allowance for more than ten days services in any one election.

(B) Each election commissioner and poll clerk, including alternates, shall be allowed and paid a sum, to be fixed by the Council, not exceeding an amount set by Council from time to time, for one day's service for attending the school of instruction for election officials.

(C) Each election commissioner and poll clerk shall be allowed and paid a sum, to be fixed by the Council, not exceeding an amount set by Council from time to time, for services at any one election. The sum to be allowed and paid to Commissioners of Election and poll clerks is herewith set at an amount set by Council from time to time.

(D) Each alternate election commissioner and poll clerk may be paid a sum, to be fixed by the Council, not exceeding an amount set by Council from time to time, for one day's service for attending the school of instruction for election officials.

(E) The Commissioners of Elections or poll clerks obtaining and delivering the election supplies and returning them are to be paid an additional sum, to be fixed by the Council, not to exceed an amount set by Council from time to time. In addition, the Commissioner of Elections or poll clerk is to be paid mileage up to the rate of reimbursement authorized by the travel management rule of the Department of Personnel for each mile necessarily traveled in the performance of his or her services.

(F) The compensation of election officers, the cost of printing ballots and all other expenses incurred in holding and making the return of elections shall be audited by the Council and paid out of the city treasury.

(Ord. passed 12-4-1980; Ord. 043, passed 9-21-2006; Ord. 164, passed 2-21-2013)

§ 35.17 ELECTRONIC VOTING SYSTEMS.

(A) The Council adopts for use in all city elections the electronic voting system which has been adopted for use by the County Commission upon such terms and conditions as may be agreed upon between the County Commission and the city.

(B) The provisions of W.Va. Code §§ 3-4A-1 et seq., relating to electronic voting systems, shall, insofar as applicable, apply to city elections.

(Ord. passed 12-4-1980; Ord. 043, passed 9-21-2006)

§ 35.18 TIE VOTES.

Whenever two or more persons receive an equal number of votes for Mayor or Council member, such tie shall be decided by ballot of the Council in existence at the time the election is held.

(Ord. passed 12-4-1980; Ord. 043, passed 9-21-2006)

Statutory reference:

Tie votes, see W.Va. Code § 8-5-15

§ 35.19 CONTESTED ELECTIONS.

All contested elections shall be heard and determined by the Council in existence at the time the election is held, and the contest shall be made and conducted as provided for by state statutes for county and district offices. The Council, by its proceedings in such cases, shall, as nearly as is practicable, conform to similar proceedings of the County Commission in such cases.

(Ord. passed 12-4-1980; Ord. 043, passed 9-21-2006)

Statutory reference:

Contested elections, see W.Va. Code § 8-5-17

§ 35.20 ABSENTEE VOTING.

The provisions of W.Va. Code Ch. 3, Art. 3, Voting by absentees, so far as applicable and except where clearly not adaptable, shall apply to all city elections.

(Ord. passed 12-4-1980; Ord. 043, passed 9-21-2006)

Statutory reference:

For state law basis of this section, see W.Va. Code § 3-3-13

§ 35.21 EARLY VOTING.

(A) The voting period for early in-person voting is to be conducted during regular business hours beginning on the thirteenth day before the election, and continuing through the third day before the election. Additionally, early in-person voting is to be available from 9:00 a.m. to 5:00 p.m. on Saturdays during the early voting period.

(Ord. 043, passed 9-21-2006; Ord. 163, passed 2-7-2013)

Statutory reference:

For state law basis of this section, see W.Va. Code § 3-3-1

§ 35.22 VACANCIES.

(A) When a vacancy occurs in a municipal elective office, the governing body shall fill the vacancy by appointment of a qualified person until the next election.

(B) The office shall be placed on the next election for service of the remainder of the vacated term or for a new term, whichever is appropriate.

(C) In the event of the temporary absence of the Mayor, the City Clerk shall serve as the Acting Mayor. In the event of an extended absence of the Mayor, Council shall by public vote select one of their number to serve as Acting Mayor. The Acting Mayor shall exercise the powers and duties of the Mayor as described in the Charter.(Ord. 043, passed 9-21-2006)

Statutory reference:

Filling of vacancies, see W.Va. Code § 8-5-10

§ 35.23 CAMPAIGN FINANCE.

The provisions of W.Va. Code Ch. 3, as they relate to campaign finance, so far as applicable and except where clearly not adaptable, shall apply to all city elections.

(Ord. 043, passed 9-21-2006)

§ 35.24 CONSTRUCTION.

(A) Nullification of former ordinances. These revisions to the city code are prospective and supersede and eviscerate all prior election ordinances that are inconsistent with the foregoing revisions.

(B) Severability. It shall be considered that it is the legislative intent, in the enactment of any ordinance, that if any part of the chapter is held unconstitutional, the remaining parts shall remain in force. Should any provision of this chapter be determined to be invalid by a court or other tribunal of competent jurisdiction, such section shall be deemed to be severable, and all other code provisions shall be in full force and effect.

(C) Inconsistency. If any provision of this chapter is found to be inconsistent with the West Virginia Code governing elections, or the Code of State Regulations governing elections, as promulgated by the West Virginia Secretary of State, then the State Code, or Code of State Regulations promulgated by the West Virginia Secretary of State shall control, and any such inconsistent provisions shall be deemed invalid.

(Ord. 043, passed 9-21-2006)

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

The invalidity of any section, clause, sentence, or provision of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid part or parts.

This Ordinance shall be effective upon passage.

PASSED AND APPROVED ON THE FIRST READING: January 5, 2023.

PASSED AND APPROVED ON THE SECOND AND READING: _____, 2023.

CITY OF ELKINS, WEST VIRGINIA

Jerry A. Marco, Mayor

Attest:

Jessica R. Sutton, City Clerk



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	January 19, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1602: Approving Promotion of and Confirming Compensation Levels for members of the Elkins Fire Department</i>
Recommended By:	Fire Civil Service Commission and Fire Chief
Summary:	Competitive testing was conducted to establish a ranked list of eligible candidates. The top three candidates are recommended for promotion.
Fiscal Impact:	increases in wage and fringe benefits are sustainable by the Fire Fund
Recommendation:	approval of promotions
Attachments:	1. Resolution 1602 2. Res 1602_conf

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV**A RESOLUTION OF COMMON COUNCIL**

(#1602)

January 19, 2023

***Approving the Promotion of and Confirming
Compensation Levels for members of the Elkins Fire Department***

WHEREAS, the City of Elkins operates the Elkins Fire Department (“the Department”) under the civil service provisions contained in West Virginia Code §8-15-22 *et seq.*, and accordingly vests the Elkins Fire Civil Service Commission (“the Commission”) with authority over various aspects of officer promotions and related matters; and,

WHEREAS, the Elkins Common Council has approved and since amended the *Rules and Regulations of the Elkins Fire Civil Service Commission*; and

WHEREAS, section 6.02 of those rules contains the following provision:

“Persons who have completed at least two (2) years continuous service in the next lower grade shall be eligible to apply for promotion in accordance with the provisions of this part”; and,

WHEREAS, Fire Chief S. Himes announced three vacancies at the rank of lieutenant in the Department; and,

WHEREAS, the Commission administered promotional testing and established an eligible list from the persons who made application per section 6.07 of the *Rules and Regulations of the Elkins Fire Civil Service Commission*; and,

WHEREAS, Firefighters Tyler Harris, Owen Poe, and Andrew Roth have been recommended by the Commission based on their combined weighted scores and ranking on the list of eligible candidates for promotion to the rank of lieutenant; and,

WHEREAS, the City of Elkins Personnel Policy Manual Sec. 4-H provides that any employee who is promoted to a higher grade classification shall be placed in the step of the new grade which best reflects the base differential between the current grade and the new grade classification; and,

WHEREAS, T. Harris, O. Poe, and A. Roth will promote from Grade 9, Step 5 to Grade 10, is Step 5; and,

WHEREAS, Elkins City Code, §30.02 provides Council with the power to prescribe and set forth compensation paid in the annual budget or through other ordinance; and,

WHEREAS, West Virginia Code, §8-5-12 provides that every municipality shall by ordinance or

budget fix or cause to be fixed the salary or compensation of every municipal officer and employee; and,

WHEREAS, sufficient funds are available within the Fire Department account of the current fiscal year's General Fund budget; *now, therefore, be it*

RESOLVED AND ORDAINED by the Common Council of the City of Elkins that T. Harris, Owen Poe and Andrew Roth are hereby appointed to the rank of Lieutenant as of January 20, 2023; and,

FURTHER, that all three shall be promoted to Grade 10, Step 5 and paid the associated wage as of this same date.

Jerry A. Marco, Mayor

Attest:

Jessica R. Sutton, City Clerk



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	January 19, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1603: Approving "Full-Time Regular Employee" Status and Confirming Compensation Level for C. Hitt</i>
Recommended By:	Operations Manager
Summary:	90 day probation period successfully completed
Fiscal Impact:	none
Recommendation:	approval
Attachments:	1. Resolution 1603 2. Resolution 1603_conf

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1603)

January 19, 2023

***Approving "Full-Time Regular Employee" Status and
Confirming Compensation Level for C. Hitt***

WHEREAS, the City of Elkins Personnel Policy Section 4.C. requires the successful completion of a 90-day probationary period and approval of council for consideration as a full-time, regular employee; and,

WHEREAS, as of November 8, 2022, Christopher Hitt will have completed the 90-day probationary period as a Street Worker II; and,

WHEREAS, the wage associated with this position is within Grade 3 of the Compensation and Classification Plan; and,

WHEREAS, Elkins City Code, §30.02 provides Council with the power to prescribe and set forth compensation paid in the annual budget or through other ordinance; and,

WHEREAS, West Virginia Code, §8-5-12 provides that every municipality shall by ordinance or budget fix or cause to be fixed the salary or compensation of every municipal officer and employee; and,

WHEREAS, sufficient funds are available within the appropriate accounts;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Common Council of the City of Elkins hereby confirms Christopher Hitt as a Street Worker II and, as of November 8, 2022, accords the status of full-time regular employee; and,

FURTHER, confirms the compensation in that position lays with Grade 3.

Jerry A. Marco, Mayor

Attest:

Jessica R. Sutton, City Clerk



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	January 19, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1604: Approving "Full-Time Regular Employee" Status and Confirming Compensation Level for D. Khol</i>
Recommended By:	Operations Manager
Summary:	90 day probation period successfully completed
Fiscal Impact:	none
Recommendation:	approval
Attachments:	1. Resolution 1604 2. Resolution 1604_conf

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1604)

January 19, 2023

***Approving "Full-Time Regular Employee" Status and
Confirming Compensation Level for D. Khol***

WHEREAS, the City of Elkins Personnel Policy Section 4.C. requires the successful completion of a 90-day probationary period and approval of council for consideration as a full-time, regular employee; and,

WHEREAS, as of December 6, 2022, Doug Khol will have completed the 90-day probationary period as a Sanitation Driver; and,

WHEREAS, the wage associated with this position is within Grade 5 of the Compensation and Classification Plan; and,

WHEREAS, Elkins City Code, §30.02 provides Council with the power to prescribe and set forth compensation paid in the annual budget or through other ordinance; and,

WHEREAS, West Virginia Code, §8-5-12 provides that every municipality shall by ordinance or budget fix or cause to be fixed the salary or compensation of every municipal officer and employee; and,

WHEREAS, sufficient funds are available within the appropriate accounts;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Common Council of the City of Elkins hereby confirms Doug Khol as a Sanitation Driver and, as of December 6, 2022, accords the status of full-time regular employee; and,

FURTHER, confirms the compensation in that position lays with Grade 5.

Jerry A. Marco, Mayor

Attest:

Jessica R. Sutton, City Clerk



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	January 19, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1605:</i> Authorizing the Appointment of I. Allen to the Elkins Tree Board
Recommended By:	Elkins Tree Board
Summary:	The ETB requests the appointment of an eighth member.
Fiscal Impact:	none
Recommendation:	approval of appointment
Attachments:	1. Resolution 1605 2. Resolution 1605_conf

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1605)

January 19, 2023

Authorizing the Appointment of I. Allen to the Elkins Tree Board

WHEREAS, the Elkins Common Council, upon final reading July 1, 2021, adopted Ordinance 284 allowing the Elkins Tree Board to maintain a board of no less than six and no more than eight members; and,

WHEREAS, there are currently seven members of the Board; and

WHEREAS, upon the recommendation of the Board, the mayor has nominated Iris Allen to fill the new term ending December 31, 2025;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby appoints Iris Allen to the Elkins Tree Board with a term ending December 31, 2025.

Jerry A. Marco, Mayor

Attest:

Jessica R. Sutton City Clerk

Ms. Jessica Sutton, City Clerk of Elkins

I am writing to you to express my interest in joining the Elkins Tree Board. With my forestry experience and my current role as the forest manager at Davis and Elkins College, I think I will be a great addition to the board.

I spent two and a half years working for the Maryland Forest Service, which exposed me to many different aspects of forestry, including the numerous benefits trees provide people, like storm water mitigation, clean air, and improved mental health. I believe I can apply this knowledge on the Elkins Tree Board to help plan tree planting projects that provide the most benefits for our community.

As the current forest manager at Davis and Elkins College, I can serve as a connection between the Elkins Tree Board and the college. If brought on to the Elkins Tree Board, I would like to develop volunteer and research opportunities for the students to get involved with our city's trees and learn more about urban forestry. Additionally, I would like to continue to work of former Tree Board members to pursue making Davis and Elkins College an Arbor Day Tree Campus.

Thank you for your consideration,

Iris Allen



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	January 19, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1606: General Fund Budget Revisions No. 1 through 3 for FY23</i>
Recommended By:	Tracy Judy, Steve Himes, Mike Kesecker/Melody Himes
Summary:	Moving funds within each department
Fiscal Impact:	None
Recommendation:	Approval of General Fund budget revisions #1. #2. and #3.
Attachments:	1. Resolution 1606

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1606)

January 19, 2023

General Fund Budget Revisions No. 1 through 3 for FY23

WHEREAS, the City of Elkins has previously prepared and submitted its General Fund Budget for the Fiscal Year 2023; and,

WHEREAS, it has become necessary to make revisions to said Budget; and,

WHEREAS, Budget Revisions No. 1 through No. 3 for FY2023 (copy attached) transfer funds as shown;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Common Council of the City of Elkins hereby approves General Fund Budget Revisions No. 1 through No. 3 for Fiscal Year 2023.

Jerry A. Marco, Mayor

Attest:

Jessica R. Sutton, City Clerk

FUND 001 BUDGET REVISION #1 FY2023

Increase		AMOUNT	Decrease		AMOUNT
001-910-215-0000	Maint of Bldgs & Grounds	\$2,000.00	001-910-341-0000	Supplies & Materials	\$2,000.00

TOTAL		\$2,000.00			\$2,000.00
--------------	--	-------------------	--	--	-------------------

PGCC

TJ 12/9/22

FUND 001 BUDGET REVISION #2 FY2023

Increase		AMOUNT	Decrease	AMOUNT
001-413-214-0000	Travel	\$257.00	001-413-341-0000	Supplies & Materials
001-413-240-0000	Refunds & Reimbursements	\$135.00		

TOTAL		\$392.00		\$392.00
--------------	--	-----------------	--	-----------------

Treasurer

TJ 12/9/22

FUND 001 BUDGET REVISION #3 FY2023

Increase		AMOUNT	Decrease		AMOUNT
001-750-459-0000	Capital Outlay Equipment	\$40,000.00	001-750-213-0000	Utilities	\$40,000.00

TOTAL		\$40,000.00			\$40,000.00
--------------	--	--------------------	--	--	--------------------

Street Dept.

MH 12/15/22



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	January 19, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1607: Fire Fund Budget Revision No. 1 for FY23</i>
Recommended By:	Treasurer and Fire Chief
Summary:	interdepartmental transfer of funds
Fiscal Impact:	none
Recommendation:	approval
Attachments:	1. Resolution 1607

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1607)

January 19, 2023

Fire Fund Budget Revision No. 1 for FY23

WHEREAS, the City of Elkins has previously prepared and submitted its Fire Fund Budget for the Fiscal Year 2023; and,

WHEREAS, it has become necessary to make revisions to said Budget; and,

WHEREAS, Budget Revision No. 1 for FY2023 (copy attached) transfer funds as shown;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Common Council of the City of Elkins hereby approves Fire Fund Budget Revision No. 1 for Fiscal Year 2023.

Jerry A. Marco, Mayor

Attest:

Jessica R. Sutton, City Clerk

FUND 036 BUDGET REVISION #1 FY2023

Increase		AMOUNT	Decrease		AMOUNT
036-706-221-0000	Training & Education	\$1,000.00	036-706-459-0000	Capital Outlay Equipment	\$1,025.00
036-706-232-0000	Bank Charges	\$25.00			

TOTAL		\$1,025.00		\$1,025.00
--------------	--	-------------------	--	-------------------

Fire Dept

SH 12/8/22



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	January 19, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1608: Approval of Budget Revision 2023-001-02 for Fiscal Year 2023</i>
Recommended By:	Treasurer
Summary:	Increasing expenditures in departments 409, 410, 415, 429, 441 and 441 Decreasing expenditures in departments 413, 435, 440 ARPA Fund clean-up
Fiscal Impact:	General Fund = \$90,814.00 ARPA \$1,544,922.00
Recommendation:	approval of revision
Attachments:	1. Resolution 1608

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV
A RESOLUTION OF COMMON COUNCIL

(#1608)
 January 19, 2023

Approval of Budget Revision 2023-001-02 for Fiscal Year 2023

At a regular session of the Elkins Common Council, held January 19, 2023, the following order was made and entered:

SUBJECT: The revision of the Levy Estimate (Budget) of the City of Elkins. The following resolution was offered:

RESOLVED: That subject to approval of the State Auditor as ex officio chief inspector of public offices the Elkins Common Council does hereby direct the budget be revised PRIOR TO THE EXPENDITURE OR OBLIGATION OF FUNDS FOR WHICH NO APPROPRIATION OR INSUFFICIENT APPROPRIATION CURRENTLY EXISTS, as shown on State Auditor Budget Revision 2 (City Budget Revision 2), copies of which are entered as part of this record.

The adoption of the foregoing resolution having been moved by _____; the vote thereon was as follows:

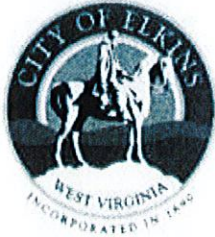
N. Bross-Fregonara		(vacant)		L. Severino	
R. Chenoweth		M. Hinchman		L. Vest	
M. Cuonzo		C. Lowther		Mayor J. Marco (in case of tie)	
J. Guye		D. Parker			

WHEREUPON: Mayor Marco declared said resolution duly adopted, and it is therefore ADJUDGED and ORDERED that said resolution be, and the same is, hereby adopted as so stated above, and the Elkins City Clerk is authorized to fix her signature on the attached "Request for Revision to Approved Budget" to be sent to the State Auditor for approval.

 Jerry A. Marco, Mayor

Attest:

 Jessica R. Sutton, City Clerk



City of Elkins

Ph. 304-636-1414 Ext. 1317 Fax: 304-635-7135

401 Davis Avenue, Elkins, WV 26241

City Treasurer – Tracy R. Judy

RE: State Budget Revision #2 Details

Revenues: Increase account 381 (Reimbursements) by \$32,000

Increase account 399 (Miscellaneous) by \$1,603,736 (1,544,922 ARPA entry clean up)

Expenditures:

Account 409-Mayor's Office, increase by \$2,180 for supplies & materials, rotary dues, hotel, conference for National League of Cities.

Account 410-Council, increase by \$2,000 for strategic planning costs and \$1,250 for Smart Growth & Strategic Planning supplies, space, and food costs.

Account 413-Treasurer, increase \$25,000 for Datamax collection-JW Didado Electric \$55,283.43 (50% paid to Datamax). Transfer \$24,345 to city clerk budget for payroll clerk.

Account 415-City Clerk, increase \$24,345 transferred from Treasurer for payroll clerk January-June 30th.

Account 429-Clearing(Demolition), increase \$27,693 from Financial Stabilization transfer for additional cleanup on River St. (Council approved \$16,693 on Dec. 1, 2022)

Account 435-Regional Development Authority, \$184 will not be used the remainder of fiscal year.

Account 440-City Hall, increase by \$30,055 from Financial Stabilization for Executime software. \$2,180 transferring to Mayor's Office.

Account 441-Other Buildings, transferring \$5,000 for Darden House.

Account 444-Transfers to Other Funds, increase \$1,544,922 (ARPA entry clean up).

Ora Ash, Deputy State Auditor
 West Virginia State Auditor's Office
200 West Main Street
 Clarksburg, WV 26301
 Phone: 627-2415 ext. 5114
 Fax: 304-340-5090
 Email: lgs@wvsao.gov

REQUEST FOR REVISION TO APPROVED BUDGET

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists.
 (§ 11-8-26a)

CONTROL NUMBER

Fiscal Year Ending **2023**Fund: **1**Revision Number **2**Pages: **1 of 1**

City of Elkins

GOVERNMENT ENTITY

401 Davis Ave.

STREET OR PO BOX

Municipality

Government Type

Person To Contact Regarding Request:

Name: **Tracy Judy**Phone: **304-636-1414, ext 1317**Fax: **304-635-7135**Email: **tjudy@cityofelkinswv.com**

Elkins

26241

CITY

ZIP CODE

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
381	Reimbursements	8,000	32,000		40,000
399	Miscellaneous Revenues	20,000	1,603,736		1,623,736
	#N/A				
	#N/A				
	#N/A				
	#N/A				

NET INCREASE/(DECREASE) Revenues (ALL PAGES)

1,635,736

Explanation for Account # 378, Municipal Specific:**Explanation for Account # 369, Contributions from Other Funds:****EXPENDITURES: (net each account category)**

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
409	Mayor's Office	28,154	2,180		30,334
410	City Council	91,474	3,250		94,724
413	Treasurer's Office	325,940	25,000	24,345	326,595
415	City Clerk	202,122	24,345		226,467
429	Clearing	17,078	27,693		44,771
435	Regional Development Authority	8,158		184	7,974
440	City Hall	473,000	30,055	2,180	500,875
441	Other buildings		5,000		5,000
444	Contributions / Transfers to Other Funds	761,608	1,544,922		2,306,530
	#N/A				

NET INCREASE/(DECREASE) Expenditures

1,635,736

APPROVED BY THE STATE AUDITOR

BY:

Deputy State Auditor, Local Government Services Division

Date

AUTHORIZED SIGNATURE
OF ENTITYAPPROVAL
DATE



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	January 19, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1609: Approving the Transfer of Funds from the Financial Stabilization Account</i>
Recommended By:	Treasurer and Public Safety Committee
Summary:	Additional funds required to support remediation of River Street lot
Fiscal Impact:	Financial Stabilization
Recommendation:	approval of transfer
Attachments:	1. Resolution 1609

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV**A RESOLUTION OF COMMON COUNCIL**

(#1609)

January 19, 2023

Approving the Transfer of Funds from the Financial Stabilization Account

WHEREAS, the City of Elkins has previously prepared and submitted its General Fund Budget for the Fiscal Year 2023; and,

WHEREAS, included in the FY23 budget is Fund 003 (Financial Stabilization); and

WHEREAS, the Finance Committee has recommended revisions to said Budget as shown;

Amount	From		To	
	Fund No.	Fund Name	Fund No.	Fund Name
\$11,000	003	Fin. Stabilization	001/ Dept. 429	General Fund/ Demolition

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Common Council of the City of Elkins hereby approves the transfer of funds from the Financial Stabilization Account (003) to other funds as indicated above.

Jerry A. Marco, Mayor

Attest:

Jessica R. Sutton, City Clerk



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	January 19, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1611:</i> Authorizing Revision of Job Descriptions within Operations Department
Recommended By:	Ad-hoc Organization Audit Committee and Operations Manager
Summary:	The Operations Administrative Assistant and Building Official position descriptions have been revised to better reflect current responsibilities.
Fiscal Impact:	none
Recommendation:	approval of updated job descriptions
Attachments:	1. Res 1611

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1611)

January 19, 2023

Authorizing Revision of Job Descriptions within Operations Department

WHEREAS, the Operations Administrative Assistant position and job description was created via Resolution 1168 on November 1, 2018; and,

WHEREAS, the Operations Manager has requested changes to the Operations Administrative Assistant job description (attached) to reflect the updated duties assigned; and,

WHEREAS, the Building Inspector/Code Enforcement Officer/Zoning Officer position has existed for many years without a formal job description; and,

WHEREAS, the Operations Manager has requested the adoption of a Building Official job description (attached) to reflect the combined and updated duties assigned; and,

WHEREAS, the Ad-hoc Organization Audit Committee has reviewed the proposed changes and recommended approval of both; and,

WHEREAS, Elkins Personnel Policy §1. B provides Council with the power to modify, interpret, revoke, or change any or all of the guidelines set forth, in whole or in part, at any time; *now, therefore, be it*

RESOLVED AND ORDAINED by the Common Council of the City of Elkins that the Operations Assistant job description be updated, and the Building Official job description be adopted, and with no change to be made to the current compensation for either.

Jerry A. Marco, Mayor

Attest:

Jessica R. Sutton, City Clerk



Job Description: Operations Admin Assist.

Employer Information

Organization Name: City of Elkins
Website: <https://cityofelkinswv.com/>
Job Code: SOC Code 43-6014
Job Location: Elkins, WV-26241
Hours/Week: 40
Reports To: Operations Manager
FLSA Status: Non-exempt Hourly Administrative Duties
Prepared by / on: Shanna Poe/Melody Himes / 11/29/2022

Job Purpose

Performs various routine-to-moderately complex clerical and secretarial duties in support of the Operations Manager and Operations Assistant. Work involves performing receptionist duties, preparing various reports and documents, maintaining files and logs, schedule meetings for Operations staff, and performing related tasks.

Tasks

- Assists in day-to-day activities of the Operations Division
- Performs responsible duties to assist the Operations Manager and Operations Assistant with detail
- Provides administrative tasks for the Building Inspector/Code Enforcement Officer
- Answer telephones and give information to callers, take messages, or transfer calls to appropriate individuals.
- Greet visitors or callers and handle their inquiries or direct them to the appropriate persons according to their needs.
- Prepares, types, processes, copies, files and/or distributes various documents, including purchase orders, training requests, expense reports, personnel action forms, correspondence, etc.
- Create, maintain, and enter information into databases.
- Use computers for various applications, such as database management or word processing.
- Operate office equipment, such as fax machines, copiers, or phone systems and arrange for repairs when equipment malfunctions.
- Set up and manage paper or electronic filing systems, recording information, updating paperwork, or maintaining documents, such as attendance records, correspondence, or other material.
- Maintain scheduling and event calendars.
- Locate and attach appropriate files to incoming correspondence requiring replies.
- Learn to operate new office technologies as they are developed and implemented.
- Order and dispense supplies.
- Arrange conference, meeting, or travel reservations for office personnel.

- Assist with clerical work on projects
- Contribute to teamwork
- Additional duties as assigned by position supervisor

Work Context

Physical Demands

Tasks Require the ability to exert light physical effort in light work, but which may involve lifting, carrying, pushing and/or pulling of objects or materials of light weight (up to 10 pounds). Tasks may require extended periods of time at keyboard or workstation.

Work Environment

Well-lighted, heated and/or air-conditioned indoor office setting with adequate ventilation.

Qualifications

Education and Experience

High school diploma or equivalent required

License, Certificate Or Registration

N/A

Work Styles

Dependability — Job requires being reliable, responsible, and dependable, and fulfilling obligations.

Integrity — Job requires being honest and ethical.

Stress Tolerance — Job requires accepting criticism and dealing calmly and effectively with high stress situations.

Adaptability/Flexibility — Job requires being open to change (positive or negative) and to considerable variety in the workplace.

Skills

Specific Skills:

- **Active Listening** — Giving full attention to what other people are saying, taking time to understand the points being made, asking questions as appropriate, and not interrupting at inappropriate times.
- **Speaking** — Talking to others to convey information effectively.
- **Reading Comprehension** — Understanding written sentences and paragraphs in work-related documents.
- **Writing** — Communicating effectively in writing as appropriate for the needs of the audience.
- **Service Orientation** — Actively looking for ways to help people.
- **Time Management** — Managing one's own time
- **Coordination** — Adjusting actions in relation to others' actions.
- **Critical Thinking** — Using logic and reasoning to identify the strengths and weaknesses of alternative solutions, conclusions, or approaches to problems.
- **Judgment and Decision Making** — Considering the relative costs and benefits of potential actions to choose the most appropriate one.
- **Social Perceptiveness** — Being aware of others' reactions and understanding why they react as they do.

Knowledge

- **Administrative** — Knowledge of administrative and office procedures and systems such as word processing, managing files and records, designing forms, and workplace terminology.
- **English Language** — Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
- **Computers and Electronics** — Knowledge of Microsoft Office including applications and programming.

DISCLAIMER: This job description is not an employment agreement or contract. Management has the exclusive right to alter this job description at any time without notice.

APPROVAL AND ACKNOWLEDGEMENT

Manager's Name

Title

Manager's Signature

Date

Employee's Name

Title

Employee's Signature

Date

The City of Elkins is an Equal Opportunity Employer including disability and protected veteran status



Job Description: Building Official

Employer Information

Organization Name: City of Elkins
Website: <https://cityofelkinswv.com/>
Job Code: SOC: 47-4011.00
Job Location: Elkins, WV-26241
Hours/Week: 40
Reports To: Operations Manager
FLSA Status: Exempt - Salaried Professional Duties
Prepared by / on: Phil Isner/Melody Himes / 11/28/2022

Job Purpose

Under minimal supervision inspects structures using engineering skills to determine structural soundness and compliance with specifications, building codes, and other regulations. Inspections may be general in nature or may be limited to a specific area, such as electrical systems or plumbing.

Supervises Property Maintenance Code Official.

Tasks

- Monitor installation of plumbing, wiring, equipment, or appliances to ensure that installation is performed properly and is in compliance with applicable regulations.
- Approve building plans that meet required specifications.
- Inspect and monitor construction sites to ensure adherence to safety standards, building codes, or specifications.
- Review and interpret plans, blueprints, site layouts, specifications, or construction methods to ensure compliance to legal requirements and safety regulations.
- Maintain daily logs and supplement inspection records with photographs.
- Conduct inspections, using survey instruments, metering devices, tape measures, or test equipment.
- Measure dimensions and verify level, alignment, or elevation of structures or fixtures to ensure compliance to building plans and codes.
- Train, direct, or supervise other construction inspectors.
- Confer with owners, violators, or authorities to explain regulations or recommend remedial actions.
- Issue permits for construction, relocation, demolition, or occupancy.
- Conduct environmental hazard inspections to identify or quantify problems, such as asbestos, poor air quality, water contamination, or other environmental hazards.

- Evaluate premises for cleanliness, such as proper garbage disposal or lack of vermin infestation.
- Monitor construction activities to ensure that environmental regulations are not violated.
- Evaluate project details to ensure adherence to environmental regulations.
- Examine lifting or conveying devices, such as elevators, escalators, moving sidewalks, hoists, inclined railways, or to ensure safety and proper functioning.
- Review and approve utility service applications to determine compliance

ZONING OFFICER:

- Keep a record of plans and applications for permits and all permits issued for zoning
- Review permit applications and notifications to determine compliance
- Receive and review applications for fowl, outdoor dining, signs, and issue Certificates of Occupancy
- Review all City of Elkins Business License applications for compliance with the zoning codes

FLOODPLAIN ADMINISTRATOR:

- Perform a flood determination on all building permits and maintain records
- Administer floodplain permits and maintain records of the permits
- Ensure all construction in the floodplain are in compliance with the floodplain ordinance
- Additional duties as assigned by position supervisor

Work Context

Physical Demands

The employee occasionally Stands; Walks; Sits; Climbs or balances; Stoops, kneels, crouches, or crawls; the employee frequently uses hands to finger, handle, or feel; frequently reaches with hands and arms

Lifts Weight or Exerts Force Work Environment

The employee occasionally lifts to 100 pounds; seldom more than 100 pounds; the employee frequently lifts up to 50 pounds; and regularly lifts up to 25 pounds.

Visions

Specific vision abilities required by this job include Close vision; Distance vision; Peripheral vision; Depth perception; Ability to adjust focus.

Work Environment

The employee occasionally works in Wet or humid conditions (non-weather); occasionally works near moving mechanical parts; occasionally works in high, precarious places; occasionally works around Fumes or airborne particles; or Toxic or caustic chemicals; occasionally works in Outdoor weather conditions; Extreme cold (non-weather); Extreme heat (non-weather); may work with Risk of electrical shock; with explosives; and/or risk of radiation.

Qualifications

Education and Experience

High school diploma or general education degree (GED)

**License,
Certificate or
Registration**

Residential Electrical Inspector Certification; Residential Building Inspector Certification; Residential Plumbing Inspector Certification; Residential Mechanical Inspector Certification; Building Code Inspector Certification; Property Maintenance & Housing Inspector; Floodplain Administrator Certification.

Work Styles

Dependability — Job requires being reliable, responsible, and dependable, and fulfilling obligations.

Integrity — Job requires being honest and ethical.

Leadership — Job requires a willingness to lead, take charge, and offer opinions and direction.

Stress Tolerance — Job requires accepting criticism and dealing calmly and effectively with high stress situations.

Adaptability/Flexibility — Job requires being open to change (positive or negative) and to considerable variety in the workplace.

Skills

Specific Skills:

- Ability to perform all essential job duties and operate associated tools and equipment with or without reasonable accommodation.
- Prepare clear and concise letters and reports.
- Operate office equipment, including computers and supporting word processing and spreadsheet applications.

Knowledge

- Public Safety and Security - Knowledge of relevant equipment, policies, procedures, and strategies to promote effective local, state, or national security operations for the protection of people, data, property, and institutions.
- Customer and Personal Service - Knowledge of principles and processes for providing customer and personal services. This includes customer needs assessment, meeting quality standards for services, and evaluation of customer satisfaction.
- Building and Construction - Knowledge of materials, methods, and the tools involved in the construction or repair of houses, buildings, or other structures such as highways and roads.
- English Language - Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
- Administration and Management - Knowledge of business and management principles involved in strategic planning, resource allocation, human resources modelling, leadership technique, production methods, and coordination of people and resources.
- Law and Government — Knowledge of laws, legal codes, court procedures, precedents, government regulations, executive orders, agency rules, and the democratic political process.

DISCLAIMER: This job description is not an employment agreement or contract. Management has the exclusive right to alter this job description at any time without notice.

APPROVAL AND ACKNOWLEDGEMENT

Manager's Name

Title

Manager's Signature

Date

Employee's Name

Title

Employee's Signature

Date

The City of Elkins is an Equal Opportunity Employer including disability and protected veteran status.



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	January 19, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1612:</i> Creation of Property Maintenance Code Official Position within the Operations Department, including Amendments to the City of Elkins Organizational Chart and Assignment to the Compensation and Classification Plan
Recommended By:	Ad-hoc Organization Audit Committee and Operations Manager
Summary:	The creation of a new position to be supervised by the Building Official. The primary duties will be in the enforcement of the Property Maintenance Code with cross training in building inspection and zoning.
Fiscal Impact:	The position is 50% funded by an RCDI grant for up to 18 months. Funds have been budgeted for the remainder of FY23 and will be for FY24 and beyond.
Recommendation:	approval of the new position
Attachments:	1. Resolution 1612

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1612)

January 19, 2023

***Creation of Property Maintenance Code Official Position with the Operations Department,
including Amendments to the City of Elkins Organizational Chart and Assignment to the
Compensation and Classification Plan***

WHEREAS, the Ad-hoc Organization Audit Committee and Operations Manager have recommended the creation of a new position to support the growing needs of the Operations Department; and,

WHEREAS, a job title of Property Maintenance Code Official and related job description, as shown on the attached document, has been reviewed and recommended; and,

WHEREAS, the Operations Manager has requested this position be assigned to Grade 8 of the Classification and Compensation Plan; and,

WHEREAS, Elkins City Code, §2-2 provides Council with the power to prescribe and set forth compensation paid in the annual budget or through other ordinance; and,

WHEREAS, West Virginia Code, §8-5-12 provides that every municipality shall by ordinance or budget fix or cause to be fixed the salary or compensation of every municipal officer and employee; and,

WHEREAS, sufficient funds are or will be made available within the Operations Department account of the current fiscal year's General Fund budget; and,

WHEREAS, the Common Council of the City of Elkins ("Council") has previously adopted a Personnel Manual, on October 21, 2010; and,

WHEREAS, Council's Personnel Committee has recommended changes to the manual's organizational chart, as shown on the attached document, which is entered as part of this record; and,

WHEREAS, Council finds that is in the best interests of the City of Elkins to adopt and implement these changes;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby approves the creation of a Property Maintenance Code Official position within the Operations Department to report directly to the Building Official; and,

IT IS FURTHER RESOLVED, THAT:

The newly created Property Maintenance Code Official position be assigned to a Grade 8;
and,

IT IS FURTHER RESOLVED, THAT:

The Elkins Common Council adopts and implements the recommended changes to the Personnel Manual's organizational chart, as shown on the attached document effective immediately.

Jerry A. Marco, Mayor

Attest:

Jessica R. Sutton, Acting City Clerk



Job Description: Property Maintenance Code Official

Employer Information

Organization Name:	City of Elkins
Website:	https://cityofelkinswv.com/
Job Code:	SOC: 47-4099
Job Location:	Elkins, WV-26241
Hours/Week:	40
Reports To:	Building Official
FLSA Status	Non-exempt Hourly Administrative Duties
Prepared by / on	Phil Isner/Melody Himes / 11/28/2022

Job Purpose

Under minimal supervision from the Building Official inspects structures using engineering skills to determine structural soundness and compliance with specifications, building codes, and other regulations. Inspections may be general in nature or may be limited to a specific area, such as electrical systems or plumbing.

Work toward attaining certifications required for Building Inspector.

Tasks

- Investigate complaints and enforce all codes related to minimum housing standards, nuisance abatement, sanitation, inoperative vehicles, environmental health; confer with citizens on compliance with ordinances relating to land use, health, and safety; respond to alleged violations involving code violations including high weeds and junk vehicles.
- Inspect homes, apartment buildings, businesses, vacant lots, and other properties; ensure compliance with applicable environmental health codes, ordinances, and regulations; determine whether property is in compliance; issue notices of violation as required; document all actions and notices; perform follow-up inspections to ensure compliance.
- Perform research to determine the approved conditional uses of property; research ownership and take action to enforce city codes.
- Assist in developing codes, guidelines, procedures, and policies.
- Maintain daily logs and supplement inspection records with photographs.
- Conduct inspections, using survey instruments, metering devices, tape measures, or test equipment.
- Measure dimensions and verify level, alignment, or elevation of structures or fixtures to ensure compliance to building plans and codes.
- Confer with owners, violators, or authorities to explain regulations or recommend remedial actions.

- Evaluate premises for cleanliness, such as proper garbage disposal or lack of vermin infestation.

ZONING OFFICER:

- Keep a record of plans and applications for permits and all permits issued for zoning
- Review permit applications and notifications to determine compliance
- Receive and review applications for fowl, outdoor dining, signs, and issue Certificates of Occupancy
- Review all City of Elkins Business License applications for compliance with the zoning codes
- Additional duties as assigned by position supervisor

Work Context

Physical Demands

The employee occasionally Stands; Walks; Sits; Climbs or balances; Stoops, kneels, crouches, or crawls; the employee frequently uses hands to finger, handle, or feel; frequently reaches with hands and arms

Lifts Weight or Exerts Force Work Environment

The employee occasionally lifts to 50 pounds; and regularly lifts up to 25 pounds.

Visions

Specific vision abilities required by this job include Close vision; Distance vision; Peripheral vision; Depth perception; Ability to adjust focus.

Work Environment

The employee occasionally works in wet or humid conditions (non-weather); occasionally works near moving mechanical parts; occasionally works in high, precarious places; occasionally works around fumes or airborne particles; or toxic or caustic chemicals; occasionally works in outdoor weather conditions; Extreme cold (non-weather); Extreme heat (non-weather); may work with risk of electrical shock; with explosives; and/or risk of radiation.

Qualifications

Education and Experience

High school diploma or general education degree (GED)

License, Certificate or Registration

Property Maintenance & Housing Inspector Certification (employee must obtain certification within two (2) years.)

Work Styles

Dependability — Job requires being reliable, responsible, and dependable, and fulfilling obligations.

Integrity — Job requires being honest and ethical.

Leadership — Job requires a willingness to lead, take charge, and offer opinions and direction.

Stress Tolerance — Job requires accepting criticism and dealing calmly and effectively with high stress situations.

Adaptability/Flexibility — Job requires being open to change (positive or negative) and to considerable variety in the workplace.

Skills

Specific Skills:

- Ability to perform all essential job duties and operate associated tools and equipment with or without reasonable accommodation.
- Prepare clear and concise letters and reports.
- Operate office equipment, including computers and supporting word processing and spreadsheet applications.

Knowledge

- Public Safety and Security - Knowledge of relevant equipment, policies, procedures, and strategies to promote effective local, state, or national security operations for the protection of people, data, property, and institutions.
- Customer and Personal Service - Knowledge of principles and processes for providing customer and personal services. This includes customer needs assessment, meeting quality standards for services, and evaluation of customer satisfaction.
- Building and Construction - Knowledge of materials, methods, and the tools involved in the construction or repair of houses, buildings, or other structures such as highways and roads.
- English Language - Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
- Law and Government — Knowledge of laws, legal codes, court procedures, precedents, government regulations, executive orders, agency rules, and the democratic political process.

DISCLAIMER: This job description is not an employment agreement or contract. Management has the exclusive right to alter this job description at any time without notice.

APPROVAL AND ACKNOWLEDGEMENT

Manager's Name

Title

Manager's Signature

Date

Employee's Name

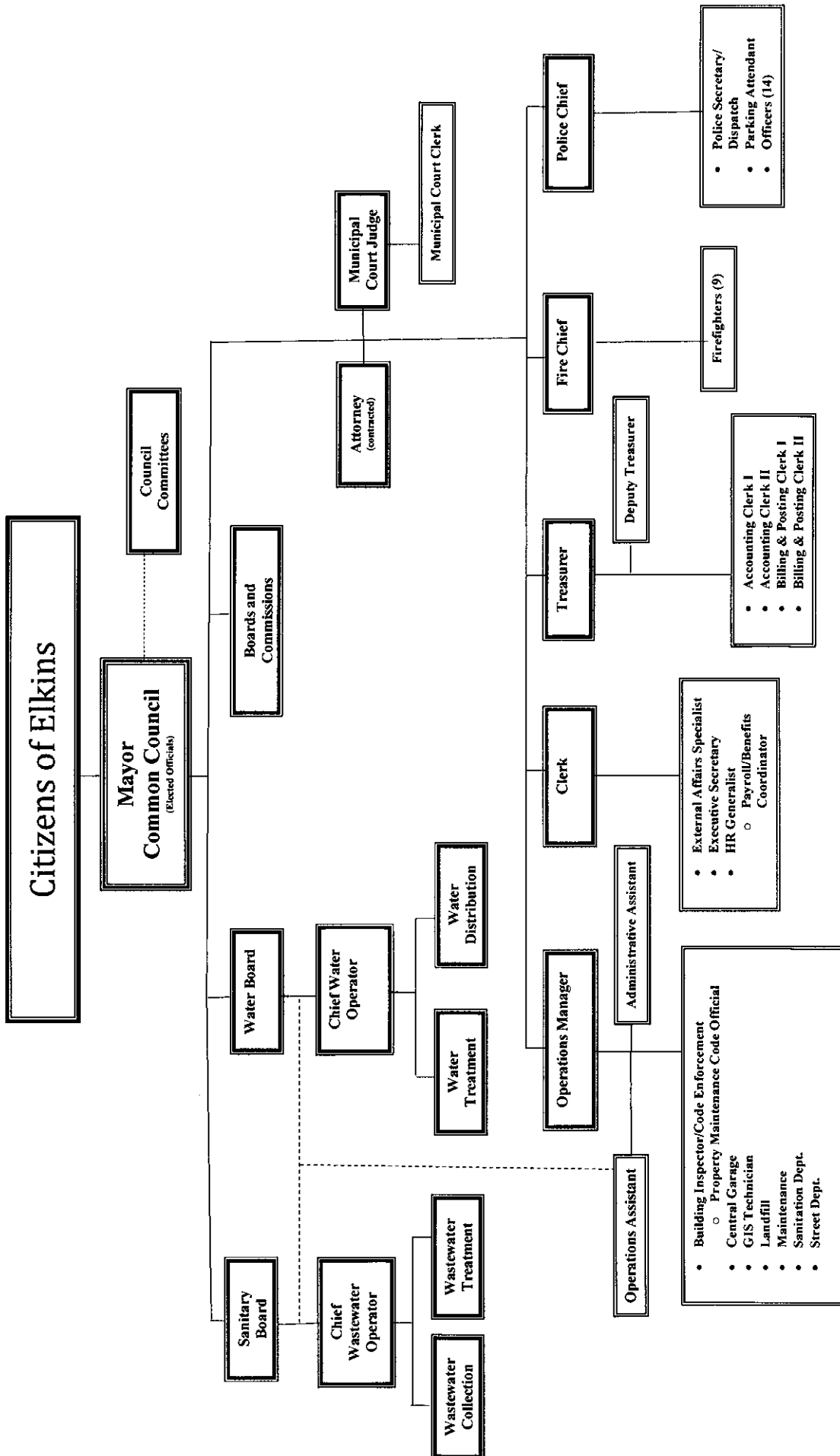
Title

Employee's Signature

Date

The City of Elkins is an Equal Opportunity Employer including disability and protected veteran status.

City of Elkins Organizational Chart



Updated: January 19, 2023

grade	Administrative	Operations	Public Safety
1			
2		Maintenance Worker	
3		Sanitation Worker I Street Worker II	Parking Attendant
4		Street Worker III	
5		Street Worker IV Street Sweeper Operator Mechanic Sanitation Driver	Telecommunicator
6	Accounting Clerk I Billing & Posting Clerk I Court Clerk Executive Secretary	Ops Administrative Assistant	FD-Probationary FF1
7	Payroll Clerk Accounting Clerk II Billing & Posting Clerk II	Construction Worker	FD-FF1
8	Deputy Treasurer	Street Asst. Supervisor Property Maintenance Code Official	
9		Operations Assistant GIS Technician Sanitation Asst. Supervisor	FD-FF2 PD-Probationary Patrolman
10			FD-Lieutenant PD-Patrolman
11		Street Supervisor Senior Mechanic Sanitation Supervisor Maintenance Supervisor	FD-Captain PD-Corporal
12	External Affairs Specialist		PD-Sergeant
13	HR Genralist		PD-1st Sergeant
14		Code Enforcement Officer	PD-1st Lieutenant
15			PD-Captain



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	January 19, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1613: Appointment of C. Griggs to Unexpired Third Ward Council Seat</i>
Recommended By:	Council interview panel
Summary:	the Council Vacancy Protocol was followed and those council members able to participate in the screening and interviews have recommended C. Griggs for appointment to the vacant 3rd ward council seat.
Fiscal Impact:	none
Recommendation:	approval of recommended candidate
Attachments:	1. Resolution 1613 2. Resolution 1613_conf

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1613)
January 19, 2023

Appointment of C. Griggs to Unexpired third Ward Council Seat

WHEREAS, on November 28, 2022, Clint Higgins resigned from the Elkins Common Council, leaving vacant a council seat in the Third Ward of the City of Elkins; and,

WHEREAS, West Virginia Code §8-5-10 provides that whenever a vacancy shall occur from any cause in any municipal elective office, the vacancy, until the next succeeding regular municipal election and until the qualification of an elected successor, shall be filled by appointment by the governing body; and,

WHEREAS, §2.02 of the Charter of the City of Elkins provides Council with the authority to appoint a qualified person by a majority vote of those present; and,

WHEREAS, the Elkins Common Council adopted a Council Vacancy Protocol on December 1, 2016 to be used henceforth in any appointment to a vacant council seat; and,

WHEREAS, having followed the Council Vacancy Protocol, the Elkins Common Council recommends the appointment of Chad Griggs, to the unexpired term of Third Ward Council Member; and,

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Common Council of the City of Elkins hereby appoints Chad Griggs as Third Ward Council Member effective upon his swearing of the oath of office and until such time as the next succeeding regular municipal election and the qualification of an elected successor may occur.

Jerry A. Marco, Mayor

Attest:

Jessica R. Sutton City Clerk