City of Elkins

Regular Council Meeting

September 25, 2024
7:00 PM
Phil Gainer Community Center
142 Robert E Lee Ave. Ext.
Elkins, WV 26241

AGENDA

1. **Invocation and Pledge of Allegiance**
2. **Call to order and roll call**
3. **Public comment**
4. **New business**
   a. Clarification of city's administrative authorities
      1. Resolution 1791: Clarifying the Authority of Council's Administrative Officers and Directing Preparation of an Ordinance to this Effect
      2. Ordinance 338: An Ordinance Of The Common Council Of The City Of Elkins, West Virginia Amending The City Charter, Section 3.01 Appointment, Powers And Duties Of The Mayor (first of two readings)
   b. Personnel matter in the Operations Department
5. **Adjournment**

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	September 25, 2024
Section:	New business
Category:	Presentation
Agenda Item Name:	Clarification of city's administrative authorities
Recommended By:	City Clerk
Summary:	After the Manager form of government was rejected by voters in the 2021 election, certain administrative authorities that would have been assigned to the Manager were never reassigned. As a result, the Charter and the Code would benefit from clarification concerning Council's assignment of administrative authorities. • The attached Resolution 1791 would begin the process of formalizing the current practice of Council's five Administrative Officers supervising their departments. • The attached Ordinance 378 eliminates wording from Charter Section 3.01 that is incompatible with the Mayor-Council form of government endorsed by voters in the 2021 election. See attached memo for more information.
Fiscal Impact:	n/a
Recommendation:	Consider the Ordinance and Resolution for approval
Attachments:	1. charter language re admin officers - 2024_09_21_v3

Memo

To: City Council

From: Sutton Stokes, City Clerk

Date: September 22, 2024

Re: Proposed Charter and Code improvements

City staff have identified some sections of the Elkins City Charter and Elkins City Code that could be clarified to enable the city government to finetune and strengthen its administration and operations. The most extensive clarifications concern the roles and authority of the city's Administrative Officers. A small change would also be helpful in the Charter's description of the Office of the Mayor.

Background

The need for these clarifications is primarily the result of certain actions not taken after the 2021 election. In that election, voters were asked to decide for or against a proposal to change the form, or "plan," of the Elkins city government.

West Virginia Code (8-3-2) allows municipalities to choose from one of five "plans" for the shape of a city government. Since at least 1901, Elkins has been chartered under the Mayor-Council Plan ("Plan I"). In 2021, voters were asked to weigh in on amending the charter to adopt a new plan, the Manager-Mayor Plan ("Plan V" in 8-3-2). Voters rejected this amendment, preferring instead to remain with the Mayor-Council Plan.

Under the Mayor-Council Plan (the city's longstanding and current plan, as endorsed by voters in the 2021 election), the mayor and council—acting *together*—are both the *governing* (i.e., lawmaking) and *administrative* (i.e., managerial and operating) authorities of the city.

If voters had endorsed the new Manager form of government, the Charter would *instead* have identified *Council* as the *governing* authority and the *Manager* as the *administrative* authority. There would also have been a Manager section of the Charter, enumerating the administrative authorities assigned by council to the Manager, such as the hiring, termination, and supervision of staff; the supervision of the city's departments and agencies; and so forth.

Who Holds Administrative Authority Now?

After voters rejected the Manager form of government, the Charter section describing the Manager's authorities was simply deleted. No later action was taken to reassign administrative authority to anyone else. This essentially left administrative authority with council and the mayor—but again, under the rules of the Mayor-Council Plan, acting only *as a body*, on a majority vote held at public meetings. Clearly, it is not possible to make the numerous daily administrative decisions required for the effective functioning of a modern city in this manner.

Role of Council's Five Administrative Officers

In practice, Council has long relied on its five appointed Administrative Officers (the City Clerk, the City Treasurer, the Fire Chief, the Operations Manager, and the Police Chief) to exercise administrative authority over their respective departments and the various personnel assigned thereto by council action. But this practice *is not explicitly described* anywhere in the Charter or Code. Because of a range of problems that can arise when these authorities are not clearly delineated, it is crucial that Council act in all deliberate haste to ensure that the above practice is reflected in city law.

The best way to formalize the above practice would be by adding a section to Code explicitly stipulating that administrative authority is delegated to the city's five Administrative Officers and that these Officers are empowered to exercise the above-described authority over their respective departments. This new section should also impose obligations and duties on these Officers, such as ensuring Council's laws and rules are faithfully executed, collaborating to prepare and submit a budget, advising Council on the condition and needs of the City, and so forth.

This section should also elaborate on the Charter's prohibition against attempting to influence or interfere with the official acts of city employees. This elaboration should establish a clear chain of command and provide a framework ensuring effective communication between elected officials and city departments.

Recommended action at Wednesday's meeting:

- Adopt a *resolution* imposing the above framework as a temporary policy
- The resolution should also direct staff to prepare an *ordinance* making these changes to Code, to be brought before council later via the usual ordinance process

Clarifications in the Office of the Mayor

Another oddity in the current Charter arises in the wording of Section 3.01, concerning the range of the powers and duties assigned to the Mayor.

Again, the form of the city's government is the Mayor-Council Plan. As mentioned above, this plan does *not* assign independent administrative authority to a Mayor. Assignment of independent administrative authority to a Mayor occurs only under Plan II, the "Strong-Mayor Plan."

However, in Charter Section 3.01(a), we find wording that typically occurs only in charters implementing a Strong-Mayor Plan (see highlighting below).

> "The Mayor shall be recognized as the chief executive officer and head of government of the City. The Mayor shall exercise all powers and perform all duties vested in or imposed by this Charter, ordinance, general law, or rule necessarily implied therefrom to carry out the functions of the office."

Because this wording could be interpreted as making a very broad grant of *unenumerated* authority, it lies in opposition to the spirit of the Mayor-Council Plan and is therefore inappropriate in the charter of a government following this Plan. Such wording could even be interpreted as trying to shift the city toward a Strong-Mayor Plan without following the official public process for adopting a new form of government, although this was clearly not the intent of anyone involved with the charter change process.

If the Council or the people of Elkins want to pursue adoption of a Strong Mayor plan, let them do so following the process required by law. But in the meantime, this wording—which may cause confusion for officials, staff, and the public—should be eliminated.

Recommended Action at Wednesday's Meeting

- Consider on first reading an ordinance clarifying that, as a government formed under the Mayor-Council Plan, the Mayor exercises only those powers granted by Council or applicable law.

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CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	September 25, 2024
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1791: Clarifying the Authority of Council's Administrative Officers and Directing Preparation of an Ordinance to this Effect
Recommended By:	City Clerk
Summary:	After the Manager form of government was rejected by voters in the 2021 election, certain administrative authorities that would have been assigned to the Manager were never reassigned. As a result, the Charter and the Code would benefit from clarification concerning Council's assignment of administrative authorities. The attached resolution would begin the process of formalizing the current practice of Council's five Administrative Officers supervising their departments.
Fiscal Impact:	n/a
Recommendation:	Consider for approval
Attachments:	1. R-1791 - clarifying authority of administrative officers

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1791)
September 25, 2024

Clarifying the Authority of Council's Administrative Officers and Directing Preparation of an Ordinance to this Effect

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WHEREAS, the Common Council of the City of Elkins, West Virginia ("Council") approved a new City Charter ("Charter") on November 19, 2020, via Ordinance 276; and,

WHEREAS, that Charter adopts the form of government knows as the Mayor-Council Plan (set forth as "Plan I" in Section 2 of Article 3 of Chapter 8 of the West Virginia Code 1931, as amended); and,

WHEREAS, under the Mayor-Council Plan, both governing and administrative authority are assigned to Council and the Mayor, acting as a body on a majority vote in a public meeting; and,

WHEREAS, Council has long relied on its five appointed Administrative Officers (the City Clerk, the City Treasurer, the Fire Chief, the Operations Manager, and the Police Chief) to exercise administrative authority over their respective departments; and,

WHEREAS, Council finds that it is in the best interest of the effective functioning of both the city government, and the public it serves, to explicitly confirm that it has delegated and continues to delegate administrative authority to these Officers over their respective departments by codifying this longstanding practice and clarifying certain processes, authorities, and duties pertaining thereto;

NOW, THEREFORE, BE IT RESOLVED, THAT:

- The Elkins Common Council hereby confirms that its five appointed Administrative Officers hold full administrative authority over their respective departments and all personnel assigned by Council thereto.
- These Officers shall be solely responsible for the appointment, termination, and supervision of employees assigned to their departments by Council.
- Except for the purpose of informational inquiries, investigations under Charter Section § 2.06, and as otherwise specifically allowed by law or Council policy, individual elected officials shall deal with city employees who are subject to the direction and supervision of the city's Administrative Officers solely through the appropriate Administrative Officer.

AND BE IT FURTHER RESOLVED, THAT:

The City's five Administrative Officers and the City Attorney shall prepare an Ordinance that would make these and related proposed amendments to Elkins City Code, to be laid before Council in all deliberate haste.

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Jerry A. Marco, Mayor

Attest:

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Sutton R. Stokes, City Clerk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	September 25, 2024
Section:	New business
Category:	Ordinance
Agenda Item Name:	Ordinance 338: An Ordinance Of The Common Council Of The City Of Elkins, West Virginia Amending The City Charter, Section 3.01 Appointment, Powers And Duties Of The Mayor (first of two readings)
Recommended By:	City Clerk
Summary:	Certain wording appears in Charter Section 3.01 that is inconsistent with the Mayor-Council form of government selected by voters in the 2021 Elkins Municipal Election. This Ordinance amends the language so that it is consistent with the Mayor-Council form of government adopted in Charter Section 1.04 and endorsed by the city's voters.
Fiscal Impact:	n/a
Recommendation:	Consider for approval
Attachments:	1. O-338 - Amending the Charter concerning Duties of the Mayor

ORDINANCE 338

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKINS, WEST VIRGINIA AMENDING THE CITY CHARTER, SECTION 3.01 APPOINTMENT, POWERS AND DUTIES OF THE MAYOR

WHEREAS, by Ordinance 276, adopted November 19, 2020, effective April 1, 2021, the City Charter was amended, and the new revised Charter was adopted; and

WHEREAS, since its adoption, certain questions have arisen which call for clarification by an amendment of the current Charter; and

WHEREAS, the Common Council finds and determines that it would be in the best interest of the City and its citizens and deems it expedient to amend Section 3.01 Appointment, Powers and Duties of the Mayor as set forth below, to attain these stated goals; and

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

NOW THEREFORE BE IT ORDAINED and ENACTED that the City Charter is amended and shall read as follows:

SECTION 3.01 APPOINTMENT, POWERS AND DUTIES OF THE MAYOR

The Mayor shall be elected at large by the qualified voters of the City, and shall serve a term of four years, beginning on the first day of July following election.

(a) The Mayor shall be recognized as the chief executive officer and head of government of the City. The Mayor shall exercise ~~all~~ only those powers and perform ~~all~~ only those duties vested in or imposed by this Charter, ordinance, general law, or other rule or order of Council. ~~necessarily implied therefrom. to carry out the functions of the office~~. The mayor shall have only such additional powers and perform such additional duties as may be prescribed

for mayors and other chief executive officers of municipalities by provisions of city, state, or federal law that are applicable to Mayors of municipalities chartered under the Mayor-Council Plan.

The changes to the City Charter are only to the Section referred to herein and all other Sections of the City Charter shall remain unchanged and in full force and effect.

If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and Common Council determines that it would have adopted this Ordinance without the invalid provision.

This Ordinance shall become effective upon passage.

PASSED AND APPROVED ON THE FIRST READING: _____, 2024.

PASSED AND APPROVED ON THE SECOND AND FINAL READING: _____, 2024.

CITY OF ELKINS, WEST VIRGINIA

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Jerry A. Marco, Mayor

Attest:

_____
Sutton Stokes, City Clerk