

Town of Nutter Fort Municipal Home Rule Application





**Municipal Home Rule Program
APPLICATION**

SECTION I: APPLICANT INFORMATION

A. General Information

Name of Municipality: Town of Nutter Fort, West Virginia
Certifying Official: Sam Maxson Title: Mayor
Contact Person: Leslie Cummings Title: Acting Treasurer, Town of Nutter Fort
Address: 1415 Buckhannon Pike
City, State, Zip: Nutter Fort, WV 26301
Telephone Number: 304-622-7713 Fax Number: N/A
E-Mail Address: mayor@townofnutterfort.com
2010 Census Population: 1,593

B. Municipal Classification

Class 1 Class II Class III Class IV

Category of Issues to be Addressed (please attach descriptions for applicable categories)

Tax Organization Administration Personnel

SECTION II: NARRATIVE (written plan, including the following)

General: The Town of Nutter Fort, [“Town”] is located along WV Route 20 and WV Route 50, situated along Elk Creek, and roughly between Clarksburg and Bridgeport, West Virginia. The Town is situated in Harrison County, and has a population of 1,593, as determined by the 2010 census.

The Town of Nutter Fort received its name from a family by the name of Nutter. The Nutters were of Scotch-English descent. Coming to America at an early date, Thomas Nutter first settled in Sussex County, Delaware, where his oldest son, Christopher was born. They moved to Augusta County, Virginia where the family remained until 1769. At that time, they moved to Fayette County, Pennsylvania, and in March of 1772, the Nutter brothers (Thomas, Matthew & Christopher) came to Harrison County where they built and defended the now famous Nutter’s Fort.

The Town was incorporated in 1923. Nestled amidst a cluster of municipalities in Harrison County, including Clarksburg, Bridgeport, the Town is home to a burgeoning community. We are privileged and eager to be planning a 100th Anniversary Town Celebration in 2023.

The Town of Nutter Fort has had the honor of holding the West Virginia Blackberry Festival, recurring the first weekend of August, since 1996. The Town also holds an annual Christmas and Halloween event. We wish to always make these bigger and better events to have more community participation. The Town has many ideas on additional festivals and markets to support within the Town. Nutter Fort would need essential funding for such plans; just like any other community, Nutter Fort encounters its own challenges and financial obstacles.



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The Town works hard to meet those challenges; however, it has long been the rule in West Virginia that a municipality only has the powers expressly granted by general statutes and its charter, the powers necessarily or fairly implied in or incidental to the powers expressly granted, and powers essential to the declared objects and purposes of the municipal corporation. *See, Sheldon v. City of Wheeling*, 146 W.Va. 691, 122 S.E.2d 427 (1961); *Maxey v. City of Bluefield*, 151 W.Va. 302, 151 S.E.2d 689 (1966). Therefore, if the Legislature has not authorized municipalities to perform certain acts, a municipality is prohibited from performing those acts.

This Application to authorize participation by the Town of Nutter Fort in the Municipal Home Rule Program demonstrates that the actions to be performed by the Town are not explicitly authorized by the Legislature through its Acts, but that those actions are proper and necessary for good government and essential for municipal growth. To that end, and following in the footsteps of many municipalities before it, the Town has proposed the following solutions to problems arising from its limited power from the Legislature:

1. “On-The-Spot” code enforcement citations. (ADMINISTRATIVE);
2. Disposition of equipment/property without public auction. (ADMINISTRATIVE);
3. Authorization to assess fire fee outside of city limits. (ADMINISTRATIVE);
4. Allow contracts with other jurisdictions via city council resolution. (ADMINISTRATIVE);
5. Assignment of court costs for municipal court proceedings. (ADMINISTRATIVE); and
6. 1% sales tax and corresponding B&O tax changes. (TAX).



1. “On-The-Spot” code enforcement citations. (ADMINISTRATIVE)

Introduction: The Town seeks authority to issue on-the-spot code enforcement citations to streamline and expedite the code enforcement regulations, and permit efficient management of code enforcement throughout the Town.

Specific laws at-issue: W. Va. Code § 8-12-16

Problem: Regulation and procedures associated with code enforcement violations are governed by W. Va. Code § 8-12-16. Under section 16, municipalities may adopt ordinances regulating the repair, closing, demolition, etc. of dwellings or buildings unfit for human habitation.

Along with the power to adopt such code enforcement ordinances, however, municipalities are burdened with limited powers to enforce those ordinances:

To the extent not otherwise authorized by state law, all notices of violation or correction for violations that do not fall within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section **issued by the enforcement agency of a municipality that has adopted the state building code shall be served in accordance with the process set forth in the state building code.** All notices of violation or correction orders for violations that do not fall within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section **issued by a code enforcement agency of a municipality that has not adopted the state building code shall be served in accordance with the law of this state concerning the service of process in civil actions,** except that personal service may be made by a code enforcement agency official and the method of service effectuated by mail by the clerk of a court as permitted by Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure is effectuated by mailing by a code enforcement agency official and shall be posted in a conspicuous place on the property that is the subject of the notice of violation or correction.

W. Va. Code § 8-12-16(i)

Proposed Solution: The Town will enact an ordinance providing Town enforcement officials authority to issue “on-the-spot” citations for certain violations. In particular, the Town seeks authority to issue “on-the-spot” citations for sanitation, drainage, high weeds, high grass, graffiti, exterior garbage accumulation, open storage in residential districts, and vehicles without proper registration. The proposed citations may be issued to owners, lessees, sub lessees, tenants, occupants, and/or the agents/managers presently having control over the property in question. The ordinance will provide those receiving an “on-the-spot” citation to contest the citation before the municipal court.



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Conclusion: Allowing “on-the-spot” citations will alleviate unnecessary and cumbersome procedural obstacles, and will facilitate efficient management of the Town’s ordinances.



2. Disposition of equipment/property without public auction. (ADMINISTRATIVE)

Introduction: Municipalities' authority to dispose of property is generally restricted to public auction:

(b) In all other cases involving a sale, any municipality is hereby empowered and authorized to sell any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration, the property to be sold at public auction at a place designated by the governing body, or by using an Internet-based public auction service, but before making any sale, notice of the time, terms, and place of sale, together with a brief description of the property to be sold, shall be published as a Class II legal advertisement in compliance with the provisions of § 59-3-1 et seq. of this code and the publication area for the publication shall be the municipality. The requirements of notice and public auction shall not apply to the sale of any one item or piece of property of less value than \$1,000 and under no circumstances shall the provisions of this section be construed as being applicable to any transaction involving the trading in of municipally owned property on the purchase of new or other property for the municipality and every municipality shall have plenary power and authority to enter into and consummate any trade-in transaction.

W. Va. Code § 8-12-18(b). Auction is defined under the West Virginia Code as: “any public sale of real or personal property when offers or bids are made by prospective purchasers and the property sold to the highest bidder.” W. Va. Code § 19-2C-1(e) (effective until June 7, 2019) (*See also* W. Va. Code § 19-2C-1(h) (effective June 7, 2019) (“Public auction’ or ‘auction’ means any public sale of real or personal property in any manner, whether in-person, via written offers or bids, or online, when offers or bids are made by prospective purchasers and the property sold to the highest bidder.”))

Specific laws at-issue: W. Va. Code § 8-12-18(b).

Problem: The current public auction requirements often creates a scenario where the sale of property by a municipality leads to sale at less than market value. Notably, the required sale at auction to the highest bidder does not equate to the actual value of the property, and more than likely, results in the sale of the property at less than its actual value.

Additionally, as required by W. Va. Code § 18-12-18(b) regarding property valued more than \$1,000.00, municipalities are additionally required to pay the costs of class II legal advertisements. Class II legal advertisements are governed by W. Va. Code § 59-3-2(a), and require once weekly publishing for two successive weeks in a qualifying newspaper. The cost of said legal advertisement is likewise governed by W. Va. Code § 59-3-3. Considering the likelihood property would be sold for less than a fair market bid alongside the additional expense of legal advertising, the Town will likely receive much less than the actual value of the property at auction.



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Proposed Solution: The Town seeks authority to enact an ordinance to establish the procedure for selling property, real or personal, valued at less than \$10,000.00 without going through the auction process. The ordinance would provide the procedure for establishing the value of property being sold. For example, the sale price of any motor vehicle may not be less than the “average loan” value, as published in the most recent available eastern edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, if the value is available; if the fair market value of the vehicle is less than the N.A.D.A. “average loan” value, the vehicle may be sold for less than the “average loan” value. The fair market value shall be based on a thorough inspection of the vehicle by an employee of the Town who shall consider the mileage of the vehicle and the condition of the body, engine and tires as indicators of its fair market value. If no fair market value is available, the Town would set the price to be paid with due consideration given the current market prices.

Conclusion: Rather than compel auctions, which are untimely, expensive, and often result in sales of property at less than market value, municipalities require more flexibility in the manner, and value at which property is sold. Removing barriers such as the legal advertisement and the public action requirement, and eliminating costs such as advertising and auctioneer commission cost, will facilitate immediate savings and eventual improved property sale value.



3. Authorization to assess fire fee outside of city limits. (ADMINISTRATIVE)

Introduction: Chartered on August 25, 1945, the Nutter Fort Volunteer Fire Department is a vital constituent of not only the Town of Nutter Fort, but also the entire capacity of North Central, Harrison County of West Virginia. The Town of Nutter Fort has accepted responsibility for providing emergency service within its first due areas, as assigned by the West Virginia State Fire Commission. This area extends beyond Nutter Fort’s jurisdictional limits, affording protection to various residents without contributing funds from the adjacent areas. It appears unfair to the residents of Nutter Fort that the Town should bear the costs of fire protection fees, while areas receive the benefit of the Town’s fire protection without charge. One hundred percent of the fire protection service that is paid by the Town of Nutter Fort comes from the General Fund.

The Nutter Fort Volunteer Fire Department answers over 700 calls per annum and effectively services more than 417 square miles with a service population of 68,911 constituents between first response and mutual aid agreements. Not to mention the NFVFD is the initial response to the largest elementary school east of the Mississippi river.

Specific laws at-issue: W. Va. Code § 8-13-13.

Problem: The Town of Nutter Fort is required by the West Virginia State Fire Commission to render fire protection services in its First Due Area as designated by the West Virginia State Fire Marshall and the West Virginia State Fire Commission. In collaboration with the Harrison County Assessors’ Office, the Town has determined there are currently 1,673 residential structures and 187 commercial structures that are within the first due response area of Nutter Fort Fire Department.

Among the Town’s first due response area, only 776 of the residential structures and 91 commercial structures are within the Town limits of Nutter Fort. Nutter Fort assesses a fire service levy within its corporate limits which funds approximately 65% of the cost of its fire protection services. Substantial funding is provided by the Town of Nutter Fort by general revenue provided by taxes within the Town limits. Meanwhile, the Town receives no revenue for providing fire protection services from its paid Fire Department outside of the Town limits. Nonetheless, the Town expends substantial expenses and manpower at a significant cost to Nutter Fort to provide fire protection services to these additional residences and businesses. In light of such obligation, the Town is left with two options: collect revenue to fund a portion of fire protection services provided outside the Town limits, or petition for a modification of Nutter Fort’s Fire Service District to restrict its first due area to Town limits.

Proposed Solution: Nutter Fort proposes to enact an ordinance to assess a fire service fee outside of its city limits and within its first due area, and to file and enforce a lien for unpaid and delinquent fees in order to provide funding for fire protection rendered outside its Town limits. This fee will be \$150/year for residential structures and \$100/year + \$.045/square foot for commercial structures and is expected to generate \$185,725.00 for the Town of Nutter Fort’s Fire Protection Services. (Total fire fees prediction generated with approximate commercial square footage provided by the Harrison County Assessor’s Office.) A fee for fire protections services outside the Town limits but within the first due area is furthermore consistent West Virginia Supreme Court opinion *Davisson*



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v. City of Bridgeport, 2014 W. Va. LEXIS 3 (W. Va. January 10, 2014) (memorandum decision). Please see attached Problem 3 worksheet attached.

Conclusion: Nutter Fort's first due area responsibilities, more than 50% of which is located outside of its Town borders, require substantial resources and manpower without contributing any revenue for the maintenance of the services. An ordinance assessing a fire fee outside the Town limits but within the first due area is necessary to support the fire protection services, and is furthermore consistent with the current case law.



**4. Allow contracts with other jurisdictions *via* city council resolution.
(ADMINISTRATIVE)**

Introduction: The current laws governing a Town’s contractual or other agreements with other jurisdictions are cumbersome and create substantial and unnecessary barriers to the Town’s efficient management of its operations.

Specific laws at-issue: West Virginia Code §§ 8-11-3; 8-11-4.

Problem: Under West Virginia Code § 8-11-3(10), the Town cannot enter into a contractual or other agreement with another jurisdiction until Council approves the transaction by ordinance. Currently, due to the requirements in West Virginia Code § 8-11-4 regarding the passage of an ordinance, it takes approximately one month for Council to approve a contract or other agreement with another jurisdiction. These procedures are unique to inter-governmental entities in that no such ordinance requirement exists for contracts between the Town and non-governmental entities.

In pertinent part, W. Va. Code § 8-11-4 requires an ordinance shall be read by title at not less than two (2) meetings of the governing body. By Ordinance, the City Council meets on the second and fourth Tuesday of each month. For the City to comply with the two meeting requirement imposed by § 8-11-4, it will take no less than one month before an intergovernmental contract/agreement to be approved. The Town is presented with numerous intergovernmental agreements each year by the State, Clarksburg, Stonewood and Bridgeport. The Town furthermore believes it would engage in additional coordination and planning with surrounding government entities if the contract/agreement process were less onerous, including paving work, demolition work, and miscellaneous purchases.

Summary of proposed solution: The Town proposes that it be authorized to approve these contracts or other agreements by resolution in the same manner as it does with similar agreements with non-governmental entities.

Conclusion: The proposed solution will promote and facilitate cooperation between jurisdictions. Additionally, the process of entering into a contract or other agreement with another governmental entity will be markedly expedited.



5. Assignment of court costs for municipal court proceedings. (ADMINISTRATIVE)

Introduction: The Town of Nutter Fort opened its municipal court in 1978. The Town prosecutes most of its criminal misdemeanor citations issued and arrests performed by the Town Police Department before the Town of Nutter Fort Municipal Court. In the course of operating its municipal court, the Town employs one municipal judge, utilizes Town resources to hold Court hearings, and carries the associated burdens of operating Court hearings including paperwork and filing, computer usage, and internet access. During the calendar year 2018, the Court processed 328 citations and 32 arrests, and held approximately 22 hearings. During the six month period from January 1, 2019, through June 30, 2019, the Court processed 128 citations and 20 arrests, and held 15 hearings.

As the Court's caseload increases, the Town naturally incurs expenses related to employment of a municipal judge, operating costs for the Court, maintenance and operation costs associated with the courtroom, and holding Court proceedings. Moreover, concurrent technological upgrades, including phone systems, computer systems, and expanded internet requirements, give rise to growing costs related to obtaining and maintaining technological upgrades. Consequently, the Town of Nutter Fort seeks authorization to enact an ordinance to assign court costs for municipal court proceedings.

Specific laws at-issue: W. Va. Code §§ 8-10-2, 8-11-1(2), 8-11-1b, and 8-12-5(58).

Problem: The Town of Nutter Fort Municipal Court was created pursuant to W. Va. Code § 8-10-2, which provides a municipality the authority to create and maintain a court. Reasonable penalties for violations of the Town's ordinances, including fines, forfeitures and confinement in the county or regional jail, are authorized by W. Va. Code § 8-11-1(2). Of course, pursuant to W. Va. 8-12-5(58) the penalties may not exceed any penalties provided for a similar offense in State Court. Unfortunately, nowhere within the above identified statutes is a municipality empowered to address court needs and create specific court costs to address those needs. Simply put, the West Virginia Code does not specifically permit municipalities the authority to assess court costs.

Proposed Solution: The Town of Nutter Fort seeks authority to enact an ordinance authorizing the Court assess Court Costs to be assessed against each individual convicted within the Town's Municipal Court. At present, the Town is considering a fee for Court Costs between \$30.00 and \$65.00. During the calendar year 2018, the Town Municipal Court held 22 hearings in which court costs could have been assessed consistent with the Town's present Home Rule Application. At the Town's contemplated Court Costs fee between \$30.00 and \$65.00, and based on the Town's 2018 data, the proposed fees could generate between \$660.00 and \$1,430.00 annually, which would be used to defray current Court operating costs.

Conclusion: Authorization to assess Court Costs will permit the Town to defray rising costs in Court maintenance and operation, and furthermore facilitate upgrade and maintenance of new technologies that have become commonplace to office and judicial settings.



6. 1% sales tax and corresponding B&O tax changes. (TAX)

Introduction: Home Rule aside, municipal revenue generation is limited to either taxation via municipal business and occupation (“B&O”) tax or by imposing a sales tax. The State Code establishes these two taxes to be mutually exclusive. The Town currently imposes B&O taxes, and would like to additionally enact a sales tax to generate revenue. Upon review of various recent applications for Home Rule, it is apparent that most municipalities have proposed sales tax components to their proposed Home Rule plans.

Specific laws at-issue: § 8-13C-1 *et seq.*

Problem: W. Va. Code § 8-13C-1 *et seq.* permits enactment of municipal sales tax for pension relief or as an “alternative municipal sales tax,” not to exceed one percent. This is available only if the municipality completely eliminates its B&O tax. W. Va. Code § 8-13C-4(b). Pursuant to W. Va. Code § 8-1-5a(k)(6), municipalities are not authorized to pass an ordinance under the Municipal Home Rule pertaining to taxation, except the limited circumstance where municipalities may enact a sales tax up to one percent if the municipalities reduce or eliminate its municipal B&O tax.

Proposed Solution: The Town proposes a five percent (5%) reduction in its B&O tax through a reduction on rental B&O taxes to a rate of 0.0% percent, while imposing a one percent sales tax on all taxable sales under the West Virginia Code. Based on the aforementioned changes, the Town expects to see a \$21,767.24, (approximately 5%,) reduction in B&O taxes, and, although the Town does not have access to data pertaining to gross sales in its jurisdiction available at this time, believes the additional in revenue from the 1% sales tax will substantially benefit the Town. See attached Financial Statement.

Conclusion: Following in the footsteps of the municipalities already awarded Home Rule, the proposed solution will promote financial stability and assist the Town in meeting financial needs for upcoming expenses and ongoing maintenance.



SECTION III: AFFIDAVITS

Hearing Mandate Verification:

To be attached after public hearing.

Publication Mandate Verification:

To be attached after public hearing.

Ordinance Authorizing Submission of Plan:

To be attached after public hearing.

Fiscal Impact Worksheets/Formulas



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Problem 6: Financial worksheet

Financial Statement:

TOWN OF NUTTER FORT					
Business & Occupation Tax/Sales Tax Projections					
Business Category	Item Description	Current Rates:	Adjusted Rates:		
Class A	Natural Gas/Resource Product	3.00%	3.00%		
Class A-1	Natural Resource - Coal	0.60%	0.60%		
Class B	Gross Manufactured Products	0.30%	0.30%		
Class C-1	Retailers & Others	0.40%	0.40%		
Class C-2	Wholesalers	0.15%	0.15%		
Class D	Contracting Business	2.00%	2.00%		
Class E	Amusement Business	0.40%	0.40%		
Class F	Rental Property	1.00%	0.00%		
Class G	Small Loan Business	1.00%	1.00%		
Class H	Service & All Other	1.00%	1.00%		
Class I	Electric Light & Power Company	4.00%	4.00%		
Class J	Electric & Power Other Sales	3.00%	3.00%		
Class K	Banking Institutions	1.00%	1.00%		

<u>2017 B&O tax collected</u>	<u>\$436,568.21</u>	Average annual B&O tax collection (for 2017 and 2018):	\$412,155.66
2017 Class F B&O tax collected:	\$21,200.20 (4.86%)		
		Projected annual B&O tax collection with reduced rate (approximately 5%):	\$390,388.42
		Projected annual reduction in B&O revenue	\$21,767.24
<u>2018 B&O tax collected</u>	<u>\$387,743.11</u>		
2018 Class F B&O tax collected:	\$22,334.28 (5.76%).	Necessary Gross Sales to Make Up for B&O Revenue Reduction:	\$21,767.24
		Projected sales tax rate:	1%
		Necessary annual gross sales to generate \$21,767.24 net to the Town*:	\$2,285,560.20
*this amount takes into account the 5% administrative fee that will be captures by the State Tax Department.			
To implement a 1% sales tax as part of Home Rule, the Town must reduce the B&O tax rate imposed.			
Once reduced, the B&O rate may not be raised without eliminating the sales tax.			



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Attorney Opinion:

To be attached after public hearing.

State of West Virginia Fees Statement:

To be attached after public hearing.

Certifying Official Signature:

Sam Maxon, Mayor
Town of Nutter Fort, West Virginia

Affidavit:

Taken, subscribed and sworn to before me, this _____ day of November, 2019.

My commission expires: _____.

NOTARY PUBLIC