

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.

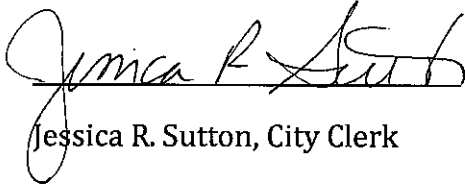
PASSED AND APPROVED ON THE SECOND AND READING: January 19, 2023.

CITY OF ELKINS, WEST VIRGINIA

A handwritten signature in black ink that reads "Jerry A. Marco". The signature is written in a cursive style and is positioned above a horizontal line.

Jerry A. Marco, Mayor

Attest:

A handwritten signature in black ink that reads "Jessica R. Sutton". The signature is written in a cursive style and is positioned above a horizontal line.

Jessica R. Sutton, City Clerk