

Municipal Home Rule Pilot Program Phase II  
Application to Amend Plan  
City of Bluefield

**Section I: Applicant Information**

**A: General Information**

Name of Municipality: City of Bluefield, West Virginia	2010 Census Population: 10,447 residents
Certifying Official and Title: Thomas J. Cole, Mayor	Contact Person and Title: Joshua D. Cline, Assistant City Manager
Address: 200 Rogers Street Bluefield, WV 24701	Telephone Number: 304.327.2401 ext. 2402
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**B. Municipal Classification**

The City of Bluefield, West Virginia is a Class II municipality as defined in West Virginia State Code §8-1-3.

**C. Category of Issues to be Addressed**

The City of Bluefield will be addressing the following administrative issue in its Municipal Home Rule Pilot Program Phase II Application to Amend its plan per the authority granted under West Virginia Code §8-1-5a(k).

- Ability for the City of Bluefield to exercise the same authority as the ABCA (Administrative)

**Section II: Narrative**

**Proposal #6: Ability for the City of Bluefield to exercise the same authority as the ABCA.**

*Specific state laws, policy rule, or regulation in question:*

West Virginia Code §60-7-12(a)(5); §60-8-34; §11-16-8(a)(5); §11-16-18(a)(1); W. Va. Code St. R. § 175-2-4.

*Specific Problem:*

The City of Bluefield is seeking to revitalize the city and capture a segment of the growing state tourism industry. While not directly on the Hatfield-McCoy Trail system, Bluefield is the southern gateway city for visitors accessing the trailhead in Bramwell, West Virginia via I-77 North and Route 460. The trails are approximately ten miles from the city. Also beneficial is the Spearhead Trail System in Pocahontas, Virginia, located just twelve miles

away. Bluefield seeks to be a hub of amenities and activities for visitors to take part in while visiting the region. Downtown revitalization, refurbishing of overnight accommodations, and revamped festivals and events give added attractions to out-of-town visitors to Southern West Virginia and the local population.

Currently, West Virginia Code does not allow restaurants and hotels in the City of Bluefield and across West Virginia to serve alcohol before the hour of 1:00 p.m. on Sundays. As the tourism industry grows in the state, city officials and businesses feel that the inability to serve alcohol before 1:00 p.m. is a hindrance to business growth and success. City officials also see the potential for tax revenue to be generated from expanded hours lost with a 1:00 p.m. serve time. Visitors expect this service as they travel across the United States. Local individuals also expect this service for events such as: wedding receptions, bridal showers, Mother's Day brunches, birthdays, and other celebrations.

Also, the location of establishments can be an issue. Many older towns have schools and churches next door or establishing themselves in close proximity in desirable locations, such as historic downtowns. The City of Bluefield has a walkable downtown area with historic churches that could fit this model.

With these provisions comes the need to appropriately police these establishments. The City of Bluefield seeks to have the same authority as the ABCA to set locations and hours for these establishments. It also seeks to the authority to, among other actions, investigate underage drinking in private clubs and enforce the set last call and closing times of such clubs.

*Proposed Solution:*

The City of Bluefield seeks to enact an ordinance(s) that will allow the City to exercise the same authority as the ABCA. This includes, but is not limited to:

- Authorize certain Class "A" ABCA License holders to serve alcohol beginning at 10:00 a.m. on Sundays
- Permit the city to waive distance requirements as necessary
- Grant proper policing authorities to, among other actions, investigate underage drinking in private clubs, enforce set last call, and closing times of such clubs

*Category of Issues to be Addressed:*

Administrative

**Conclusion**

The state has changed laws regarding the sale of alcohol numerous times in West Virginia's history as public desire has changed. This time is no different, businesses desire this ability. It should also be pointed out that Shepherdstown and Martinsburg have implemented similar initiatives with success. We look forward to this opportunity to better self-govern through the Municipal Home Rule Program.

The Municipal Home Rule program is a wonderful petri dish for West Virginia to test new initiatives with the goal of finding real solutions to the problems communities face. This program has been a catalyst for city officials and administrators in Bluefield to think about better ways to govern. Having the power to improve the prospects of the city has reenergized city leaders. Having more localized authority will allow our community leaders tools to begin building a better future.

Submitted for the July 11, 2016 meeting of the Municipal Home Rule Board

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MOORE, KERSEY & STAFFORD, PLLC

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DONALD T. CARUTH  
(1950-2010)

\*ALSO ADMITTED IN VA

July 6, 2016

Applicant: CITY OF BLUEFIELD, WEST VIRGINIA

Re: City of Bluefield's proposed Amendment to Home Rule Plan

Ladies and Gentlemen,

As City Attorney for the City of Bluefield, I have reviewed West Virginia Code § 8-1-5a, Municipal Home Rule Pilot Program, the Application of the City of Bluefield to amend its previously approved written plan, and other documents related thereto as I have deemed necessary for the purposes of this opinion.

Based on the examination of such documents and my understanding of the intent of the proposed provisions contained within the proposed Amended Plan, it is my opinion that the proposed amendment complies with the required statutory requirements in that:

A. The Amended Plan does not contain any proposed changes to ordinances, acts, resolutions, rules or regulations that are contrary to current law pertaining to:

- (1) Environmental law;
- (2) Bidding on government construction and other contracts;
- (3) The Freedom of Information Act;
- (4) The Open Governmental Proceedings Act;
- (5) Wages for construction of public improvements;
- (6) West Virginia Code § 8-1-5a; and
- (7) West Virginia Code § 8-12-5a.

B. The Amended Plan does not contain any proposed changes to ordinances, acts, resolutions, rules or regulations pertaining to:

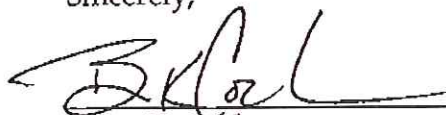
- (1) The Constitution of the United States or West Virginia;
- (2) Federal law or crimes and punishment;
- (3) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;
- (4) Pensions or retirement plans;
- (5) Annexation;
- (6) Taxation: *Provided*, that the City of Bluefield may seek approval to enact a municipal sales tax up to one percent, and reduce its municipal business and occupation tax, in compliance with West Virginia Code § 8-1-5a (k)(6).
- (7) Tax increment financing;
- (8) Extraction of natural resources;
- (9) Persons or property outside the boundaries of the municipality;
- (10) Marriage and divorce laws; or
- (11) An occupation tax, fee or assessment payable by a nonresident of a municipality.

C. The City of Bluefield held a properly noticed Public Hearing on July 5, 2016 on the proposed amendment, which was made available to the public for inspection thirty days prior to the Public Hearing.

D. On July 5, 2016, the City of Bluefield passed an ordinance authorizing the submission of the proposed amendment to the written plan to the Municipal Home Rule Board.

The Municipal Home Rule Board may rely on this opinion.

Sincerely,



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Brian K. Cochran  
Counsel for the City of Bluefield

BKC/tm

**AN ORDINANCE AUTHORIZING THE CITY OF BLUEFIELD TO SUBMIT TO THE MUNICIPAL HOME RULE BOARD A PROPOSED AMENDMENT, ATTACHED HERETO AS EXHIBIT A, TO THE CITY OF BLUEFIELD'S MUNICIPAL HOME RULE PLAN CONSISTENT WITH WEST VIRGINIA CODE 8-1-5a, REQUESTING APPROVAL FOR THE ABILITY TO EXERCISE THE SAME AUTHORITY AS THE ABCA.**

**WHEREAS**, the owners of restaurants and hotels in the City have indicated that there is a market for brunch service on Sundays, and that current restrictions on hours of Sunday alcohol service imposed by state law stifle Sunday morning brunch attendance; and

**WHEREAS**, the City essentially has the same authority over bars as it would over any other private dwelling and seeks to act with the same authority as the ABCA, and not be precluded by the ABCA from taking action regulating aspects of private clubs such as, but not limited to, hours served, enforcing closing times, and the location in which bars may operate; and

**WHEREAS**, the City has determined that allowing alcohol sales at Sunday morning brunch service and determining the location in which bars may operate within the City will produce more revenue and strengthen city and state sales tax revenues, and increase earnings for servers and other employees working in the establishments within the City; and

**WHEREAS**, the ability of the City to gain these new authorities will assist it in capturing tourism opportunities in the region, and to attract new residents and to retain its current residents.

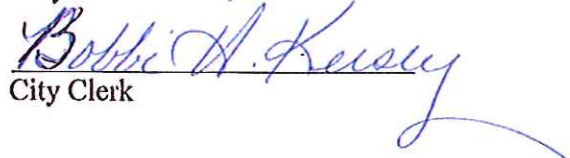
**NOW THEREFORE BE IT RESOLVED**, that on behalf of the City of Bluefield, the city administration is hereby authorized and requested to submit to the Municipal Home Rule Board a proposed amendment, attached hereto as Exhibit "A," to the City of Bluefield's Municipal Home Rule plan requesting approval for the ability to exercise the same authority as the ABCA.

First Reading: June 28, 2016

Second Reading and Adoption: July 5, 2016

Recorded: July 5, 2016

  
Mayor

  
City Clerk

**REGULAR MEETING – BOARD OF DIRECTORS  
BLUEFIELD, MERCER COUNTY, WEST VIRGINIA  
June 28, 2016  
NOON**

A regular meeting of the Board of Directors of the City of Bluefield, Mercer County, West Virginia was held on Tuesday, June 28, 2016, at noon in the Municipal Building Boardroom. Present were Mayor Thomas J. Cole, Vice Mayor Barbara Thompson Smith, Director Chuck McGonagle, Director Ellen Light, Director Michael Gibson, City Manager Dane Rideout, Assistant City Manager Josh Cline, City Attorney Brian Cochran, City Treasurer Kelly Davis, Community and Economic Development Director Jim Spencer and City Clerk Bobbi Kersey.

**INVOCATION – PLEDGE OF ALLEGIANCE – CALL TO ORDER**

Vice Mayor Barbara Thompson-Smith invoked divine guidance for the conduct of the meeting and led the Pledge of Allegiance to the Flag of the United States of America.

Mayor Thomas J. Cole called the meeting to order.

**APPROVAL OF THE MINUTES**

Vice Mayor Barbara Thompson Smith made a motion that the minutes of the June 14, 2016, Board of Directors meeting be approved as presented, second; unanimously approved and so ordered.

**CITY MANAGER REPORT: DANE RIDEOUT**

**Fireworks** are being sold but according to the Code of Ordinances for the City of Bluefield and State Code the following is prohibited:

- Lighting or using inside the city limits
- Fireworks or sparking devices cannot be lit or discharged into or at a vehicle or building.
- Under the influence of alcohol or drugs.

Citizens are encouraged to attend professional shows like the upcoming fireworks display at Bowen Field on July 1<sup>st</sup>. (Code 1974, § 14-39; Ord. No. 93-9, 11-23-1993)

**State Law reference**— Local restrictions on firearms and weapons, W. Va. Code, §§ 8-12-5(16), 8-12-5a.

**Paving** has been completed for eight of the seventeen roads and will continue after the July 4<sup>th</sup> holiday. The Board is doing what they said when fees were raised and over three miles will be paved instead of two.

**Police Substation** located at the old fire station #2 is nearing completion. July 19<sup>th</sup> has been scheduled for the grand opening.

**Parks and Recreation** has many programs for adults and children. Katana Mullen and Breanne Vencill have completed their Professional Development training for after school and day care. The after school program is now registered with the State of West Virginia. A

detailed schedule is available on the website of all of events at Parks and Recreation. ([www.cityofbluefield.com](http://www.cityofbluefield.com) or <https://www.facebook.com/bluefieldparksandrecreationcenter>). Citizens are encouraged to get involved in activities being offered by parks and recreation.

**Demolition** was slowed due to the weather. Four demos are scheduled to begin this week.

**Human Resources Specialist Angie Foley** has been instrumental in enrolling approximately seventy employees in a sponsored PEIA program developing Workplace Wellness. The program is all voluntary.

**Firefighter Union 347 led by Fireman Scottie Dingus** are collecting needed items for the recent flood victims. Cole Harley and Cole Hyundai along with many organizations and churches have all rallied to help those in need. Congressman Evan Jenkins has been in Greenbrier County since day one. Congressman Jenkins helped in getting FEMA to the flood area and has been very involved.

**Letter to the Editor in the Bluefield Daily Telegraph** printed an editorial stating Board and Lawmakers should support Rideout. City Manager Rideout stated he felt thought this person supported what was being done through the legal channels concerning KVAT/ Kroger. City Manager Rideout said he operates on behalf and under the direction of the Board of Directors. The Board of Directors is very supportive of the City Manager.

#### **Community and Economic Development Director Jim Spencer**

- Partnership with Pipestem State Park tours will begin June 18<sup>th</sup>. Pipestem visitors will arrive in Bluefield for shopping, dinner and a BlueJay's game at Bowen Field. A group from Bluefield will travel to Pipestem on Wednesday, July 6<sup>th</sup> and 20<sup>th</sup>.
- Fantastic Friday continues weather permitting. This week produce will be available from McDowell county.
- MyBluefield website will now have a newsletter.
- Representatives from EL Robinson were present and gave an update on a preapplication for updating the old Freight Station/ Commercialization Station. Community and Economic Development Director Jim Spencer read the following Resolution, drafted by Region I.

**Whereas**, the City of Bluefield wishes to submit an application to the 2016 POWER Initiative Grant Program for the Bluefield Commercialization Station Project, and;

**Whereas**, the City of Bluefield must give assurances that Program Regulations related to grant administration, civil rights and other applicable State and Federal Laws will be followed, and ;

**Whereas**, the City of Bluefield must designate an official representative to act in connection with the application and execute all necessary program documents:

#### **Now, Therefore, Be It Resolved That:**

1. The City of Bluefield authorized the submission of an application to the 2016



- POWER Initiative Grant for the Bluefield Commercialization Station Project.
2. The City of Bluefield will comply with all laws and regulations pertaining to the program.
  3. Thomas J. Cole, Mayor, is designated as the authorized official to act in connection with the application.

**The Resolution was unanimously approved and so ordered by the Bluefield City Board of Directors.**

**PUBLIC COMMENTS:**

**Carol Duncan, Bluefield citizen** requested Boyd Street be paved.

**Kathy Neese, Bluefield citizen** discussed traffic issues on Frederick Street and requested speed humps.

**Mary Jo Babbitt, chairman of Fine Arts Commission** questioned why the Fines Arts Commission code section was being repealed and explained the goals and functions of the commission. Mayor Cole and City Manager Rideout stated that all boards and commissions are being reviewed and evaluated for their need. Director Michael Gibson said there would be a second reading of the ordinance, in the event the first reading passes, Ms. Babbitt would have an opportunity to come with a plan.

**Art Riley, representing the Downtown Merchants Association**, discussed the following:

- Times for the Pipestem Tour bus – will be in town around 4:00 p.m., will leave for the ballpark around 5:45 p.m.
- Who receives the newsletter – is open for all citizens. If you want to receive go to MyBluefield and sign in with email address. Merchants can send information to Mr. Spencer,
- Can merchants get information on the city calendar – citizens can submit events to the city.
- July 1st celebration in Chicory Square- noon concert- sponsored by Cole Chevy. Everyone is invited.

**ACTION ITEMS:**

**City Treasurer Kelly Davis** requested approval to submit eighty –nine (89) June accounts for collection in the amount of \$63,131.00. **Director Michael Gibson** moved to approve the eighty - nine accounts for May in the amount of \$63,131.00 be sent to collections, second; **unanimously approved and so ordered.**

Mayor Cole read the title seeking **Approval of Resolution Authorizing a Correction to the Zoning Map of the City of Bluefield.** City Attorney Brian Cochran stated this resolution was to correct a mistake that certain parcels of real estate located along Greenbrier Street were incorrectly designated on the zoning map of the city to be zoned R-3 (residential). This resolution would authorize and directs the City Manager to correct the Zoning Map of the City of Bluefield to reflect the parcels described in the resolution to be zoned MH (Heavy Industrial Manufacturing). **Director Ellen Light** moved to approve the **Resolution Authorizing a Correction to the Zoning Map of the City of Bluefield, second; unanimously approved and so ordered.**

Mayor Cole read the title seeking authorization to accept and record deed of gift from Andrea Braais for certain parcels of real estate situate off Carolina Avenue in the City of Bluefield. City Attorney stated Carolina Avenue is property that the city is looking to acquire for potential street closure. This property is adjacent to the property on Thorn Street the city is also working to acquire. Director Ellen Light moved to accept and record deed of gift from Andrea Braais for certain parcels of real estate situate off Carolina Avenue in the City of Bluefield, second; unanimously approved and so ordered.

**Approval of Resolution Authorizing the City of Bluefield to Enter into a Lease Agreement with Nick Harrison.** Mayor Cole stated there was a Public Hearing before the board meeting. Director Michael Gibson moved to approve the Resolution Authorizing the City of Bluefield to Enter into a Lease Agreement with Nick Harrison, second; unanimously approved and so ordered.

Mayor Cole read the first reading of **AN ORDINANCE AUTHORIZING THE CITY OF BLUEFIELD TO PURCHASE A PARCEL OF REAL ESTATE SITUATED IN THE CITY OF BLUEFIELD, MERCER COUNTY, WEST VIRGINIA FOR A PRICE OF \$2,300.00.** City Attorney Brian Cochran stated these parcels of real estate belonged to Leila Jreisat. These parcels are also located on Carolina Avenue. Director Ellen Light moved to approve the first reading **AN ORDINANCE AUTHORIZING THE CITY OF BLUEFIELD TO PURCHASE A PARCEL OF REAL ESTATE SITUATED IN THE CITY OF BLUEFIELD, MERCER COUNTY, WEST VIRGINIA FOR A PRICE OF \$2,300.00,** second; unanimously approved.

Mayor Cole read the first reading of **AN ORDINANCE AUTHORIZING THE CITY OF BLUEFIELD TO SUBMIT TO THE MUNICIPAL HOME RULE BOARD A PROPOSED AMENDMENT, ATTACHED HERETO AS EXHIBIT A, TO THE CITY OF BLUEFIELD'S MUNICIPAL HOME RULE PLAN CONSISTENT WITH THE WEST VIRGINIA CODE 8-1-5a, REQUESTING APPROVAL FOR THE ABILITY TO EXERCISE THE SAME AUTHORITY AS THE ABCA.** City Attorney Brian Cochran stated there would be a Public Hearing on this ordinance on July 5<sup>th</sup>. This ordinance authorizes the City to submit to the Municipal Home Rule Board, on July 11<sup>th</sup>, a proposed amendment for the ability to exercise the same or similar authority as the ABCA. This was the Home Rule ordinance that was recently authorized by State Code regarding the Brunch Bill. Director Michael Gibson moved to approve the first reading of **AN ORDINANCE AUTHORIZING THE CITY OF BLUEFIELD TO SUBMIT TO THE MUNICIPAL HOME RULE BOARD A PROPOSED AMENDMENT, ATTACHED HERETO AS EXHIBIT A, TO THE CITY OF BLUEFIELD'S MUNICIPAL HOME RULE PLAN CONSISTENT WITH THE WEST VIRGINIA CODE 8-1-5a, REQUESTING APPROVAL FOR THE ABILITY TO EXERCISE THE SAME AUTHORITY AS THE ABCA.** The first reading passed with four yes votes and Mayor Cole abstaining.

Mayor Cole read the first reading of **AN ORDINANCE REPEALING AND RESERVING SECTIONS 26-2, 26-3, 26-4, 26-5, AND 26-6 OF ARTICLE I, CHAPTER 26, PART II OF THE CODE OF ORDINANCES OF THE CITY OF BLUEFIELD.** City Manager Dane Rideout stated he was asked to review all boards and commissions. Several things were assessed for the commission: website updates, redundancy in goals, membership update, communication with city, meeting times, etc. City Manager

Rideout said provisions will be made for the East River Town Band. **Director Michael Gibson moved to approve the first reading of AN ORDINANCE REPEALING AND RESERVING SECTIONS 26-2, 26-3, 26-4, 26-5, AND 26-6 OF ARTICLE I, CHAPTER 26, PART II OF THE CODE OF ORDINANCES OF THE CITY OF BLUEFIELD. The first reading passed (3-1-1).** Director Ellen Light abstained and Director Chuck McGonagle voted no.

Mayor Cole first reading of **AN ORDINANCE PROVIDING FOR THE AMENDMENT TO CHAPTER 38, SECTION 38-24(a)(6)(b) OF PART II OF THE CODE OF ORDINANCES OF THE CITY OF BLUEFIELD.** City Attorney Brian Cochran stated this would change the yard sale ordinance. Currently the City permits six (6) yard sales per year. If approved the new ordinance would provide yard sales that may occur no more than three (3) times per calendar year at any single location owned or occupied by a family unit. Each sale could last no longer than 72 hours per sale, and cannot occur less than ten days after any previous sale. Permit holders may apply to the City Manager for one additional special permit. **Director Michael Gibson moved to approve the first reading of AN ORDINANCE PROVIDING FOR THE AMENDMENT TO CHAPTER 38, SECTION 38-24(a)(6)(b) OF PART II OF THE CODE OF ORDINANCES OF THE CITY OF BLUEFIELD, second; unanimously approved and so ordered.**

**OTHER:**

Director Michael Gibson moved to adjourn, second; unanimously approved and so ordered.

\_\_\_\_\_  
Bobbi Kersey, City Clerk

\_\_\_\_\_  
Thomas J. Cole, Mayor

## PUBLIC HEARING

July 5, 2016  
10:00 a.m.

A Public Hearing was held on July 5, 2016, in the Municipal Boardroom.

Present were Vice Mayor Barbara Thompson Smith, Director Ellen Light, Director Chuck McGonagle, City Manager Dane Rideout, Assistant City Manager Josh Cline, City Attorney Brian Cochran, and City Clerk Bobbi Kersey. Mayor Thomas J. Cole and Director Michael Gibson were absent.

Vice Mayor Barbara Thompson Smith called the Public Hearing to order.

Vice Mayor Barbara Thompson Smith read **AN ORDINANCE AUTHORIZING THE CITY OF BLUEFIELD TO SUBMIT TO THE MUNICIPAL HOME RULE BOARD A PROPOSED AMENDMENT, ATTACHED HERETO AS EXHIBIT A, TO THE CITY OF BLUEFIELD'S MUNICIPAL HOME RULE PLAN CONSISTENT WITH THE WEST VIRGINIA CODE 8-1-5a, REQUESTING APPROVAL FOR THE ABILITY TO EXERCISE THE SAME AUTHORITY AS THE ABCA.** City Attorney Brian Cochran Stated this ordinance authorizes the City to submit to the Municipal Home Rule Board, on July 11<sup>th</sup>, 2016, a proposed amendment for the ability to exercise the same or similar authority as the ABDA. This was the Home Rule ordinance that was recently authorized by State Code regarding the Brunch Bill.

Vice Mayor Barbara Thompson Smith opened the floor for public discussion. With no public attendance present for the Public Hearing, Vice Mayor Barbara Thompson Smith Closed the Public Hearing.

Attest:  
Bobbi H. Kersey, City Clerk

Barbara Thompson Smith, Vice Mayor

## PUBLIC MEETING

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Present were Vice Mayor Barbara Thompson Smith, Director Ellen Light, Director Chuck McGonagle, City Manager Dane Rideout, Assistant City Manager Josh Cline, City Attorney Brian Cochran, and City Clerk Bobbi Kersey. Mayor Thomas J. Cole and Director Michael Gibson were absent.

Vice Mayor Barbara Thompson Smith called the Public Meeting to order.

Vice Mayor Barbara Thompson Smith read the second reading **AN ORDINANCE AUTHORIZING THE CITY OF BLUEFIELD TO SUBMIT TO THE MUNICIPAL HOME RULE BOARD A PROPOSED AMENDMENT, ATTACHED HERETO AS EXHIBIT A, TO THE CITY OF BLUEFIELD'S MUNICIPAL HOME RULE PLAN CONSISTENT WITH THE WEST VIRGINIA CODE 8-1-5a, REQUESTING APPROVAL FOR THE ABILITY TO EXERCISE THE SAME AUTHORITY AS THE ABCA.**

Vice Mayor Barbara Thompson Smith opened the floor for public discussion. With no public attendance present for the Public Meeting, Director Chuck McGonagle moved to approve the second reading **AN ORDINANCE AUTHORIZING THE CITY OF BLUEFIELD TO SUBMIT TO THE MUNICIPAL HOME RULE BOARD A PROPOSED AMENDMENT, ATTACHED HERETO AS EXHIBIT A, TO THE CITY OF BLUEFIELD'S MUNICIPAL HOME RULE PLAN CONSISTENT WITH THE WEST VIRGINIA CODE 8-1-5a, REQUESTING APPROVAL FOR THE ABILITY TO EXERCISE THE SAME AUTHORITY AS THE ABCA,** second; unanimously approved and so ordered.

Vice Mayor Barbara Thompson Smith closed the Public Meeting.

Attest:

Bobbi H. Kersey, City Clerk

Barbara Thompson Smith, Vice Mayor