

CITY OF CHARLESTON



July 11, 2016

Home Rule Plan Amendment

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City of Charleston

HOME RULE PLAN AMENDMENT

INTRODUCTION

In 2008, pursuant to the authority provided by W. Va. State Code Section 8-1-5a, the Municipal Home Rule board (the “Board”) selected the City of Charleston (“Charleston”), along with three other municipalities, to participate in the West Virginia Home Rule Pilot Program and approved the original Home Rule Plan of Charleston. As evidenced by the Performance Evaluation and Research Division’s special report on the Municipal Home Rule Pilot Program, Charleston has successfully and responsibly exercised its powers under Home Rule and has, without challenge from either its City Council or citizenry, judiciously implemented its plan and previous amendments thereto.

Under W. Va. State Code Section 8-1-5a(k), municipalities participating in the Municipal Home Rule Pilot Program may amend their written plans. For the reasons set forth herein, Charleston is now requesting that the Board authorize the following amendment to Charleston’s approved plan.

SPECIFIC STATE LAWS, POLICIES, RULES, OR REGULATIONS

W. Va. State Code Section 60-7-12(a)(5); 60-8-34; 11-16-18(a)(1), attached as Exhibit A hereto.

PROBLEM: WEST VIRGINIA STATE CODE RESTRAINS RESTAURANTS AND HOTELS DURING BRUNCH HOURS BY PROHIBITING THE SERVICE OF ALCOHOL BEFORE THE HOUR OF ONE O’CLOCK P.M. ON SUNDAYS

A Short History of Brunch

According to the Smithsonian, Sunday brunch was popularized in the 1930’s by hotels as a dining option for travelers on a day when many restaurants were closed. Combining two services (breakfast and lunch) into one provided staffing and kitchen economies for the establishments. Restaurants soon also began offering brunch service and began popularizing the inclusion of morning cocktails such as Bloody Marys, Bellinis, or Mimosas. The popularity of brunch extended as women entered the post-World War II workforce and began looking for an option to preserve the tradition of a Sunday meal with family and friends, but without the time spent in the kitchen preparing that meal. More and more, weekend mornings became the preferred time for groups of friends with career and family obligations to get together. Brunch also offered a form of celebration on holidays like Mother’s Day and Easter, and in the last decade has given rise to new traditions like the bridal brunch.

West Virginia Liquor Laws

Since the repeal of prohibition, West Virginia has maintained various laws regulating the sale of alcohol, including the current prohibition on the sale of alcohol before one o'clock p.m. on Sundays. As the popularity of brunch grew, some restaurants and hotels in Charleston and other West Virginia municipalities began offering brunch service, but have indicated that the inability to serve the traditional brunch cocktails until the afternoon has stifled attendance and resulted in limited revenue. On behalf of its membership, the West Virginia Hospitality and Travel Association has advocated for a relaxation of the state's liquor laws to allow alcohol to be served before one o'clock on Sundays so that establishments can capitalize on the popularity of brunch and maximize their revenue from brunch service.

SOLUTION: THE CITY OF CHARLESTON DESIRES TO AUTHORIZE CERTAIN CLASS "A" ABCA LICENSE HOLDERS TO SERVE ALCOHOL BEGINNING AT TEN O'CLOCK A.M. ON SUNDAYS.

Cities that have been approved as Home Rule cities are permitted to modify the time at which alcohol may be served on Sundays within their cities, and such a modification is the type of innovative solution that was intended by the Legislature when it enacted the Home Rule Statute. See 8-1-5a(a) (intent); see also 8-1-5a(i) (modification of time for sale of alcohol within a Home Rule City is not contrary to the provisions of the Home Rule Statute). The Legislature has acknowledged the value of the Home Rule Program as an incubator for municipalities to try new ideas and solutions to overcome administrative and economic restraints and has enacted several state laws that began as one City's idea in the Home Rule Program. With regard to this issue, Shepherdstown has already successfully enacted its own rules regarding Sunday alcohol sales through Home Rule, and if authorized to do the same, Charleston's enactment will provide citizens with the opportunity to witness and experience an unrestricted, traditional brunch service in the Capital City.

Although Counties do not currently have home rule powers, the Legislature did recently address the issue of relaxing restrictions on Sunday alcohol sales on a countywide basis. During the 2016 regular session, the Legislature enacted law that provides a mechanism for interested counties to place that issue on the ballot. Notwithstanding, counties and cities often serve a very different population. A survey of Google search interests in "brunch" published in the Washington Post indicates that brunch is much more popular in urban areas than in rural areas. Given that the interests of Charleston and those of the rest of the county may be varied, restaurant and hotel owners and operators located in Charleston and the Charleston Convention and Visitor's Bureau ("CVB") have requested that the City pursue this issue now. The City remains supportive of any action the county may take to make earlier alcohol service available countywide. Successful enactment by Charleston now will also benefit the county and any other city or county that may be considering Home Rule enactment or countywide election by demonstrating the benefits of relaxing Sunday alcohol restrictions prior to the time in which that issue could be placed on a countywide ballot.

There is good reason to believe that enactment of this power by Charleston will benefit its citizenry and result in an economic enhancement to businesses within the City. The owner of one downtown restaurant estimates that his business would realize an additional \$1,200 per Sunday if alcohol service were to begin at 10:00 a.m. Another has indicated that although it does not currently serve brunch, the earlier serving time would provide adequate incentive for it to start. One of the larger downtown hotels has indicated that there is a market for champagne brunch events on which they have heretofore been unable to fully capitalize. The expanded window for alcohol service may also facilitate more events on Sundays benefiting caterers and event venues. All of this increased revenue for both small and large hospitality business will result in additional business and occupation tax for the City and increased sales tax revenue for both the City and the

state. There may also be additional benefits to the City, state, and its citizens from increased working hours and/or tips for servers and other hospitality workers.

The CVB and its Board of Directors, which is composed of civic leaders and people involved in the City's hospitality and tourism industries, fully support the City's use of Home Rule to allow earlier Sunday alcohol service in Charleston. Aside from the potential direct financial benefit, relaxing Sunday liquor laws and allowing restaurants in the City to be fully operational on Sunday enhance the City's image in the eyes of business and leisure travelers thereby enriching their travel experience in Charleston and promoting Charleston as a hip, historic destination.

The City's Comprehensive Plan envisions the reinforcement of Charleston's position as the region's entertainment and cultural destination, and active promotion of Charleston as a city that offers a range of lifestyle choices. These goals are instrumental in attracting new residents to the City, and retaining its current residents. The establishment of earlier Sunday alcohol service is another way for the City to meet these goals and strengthen its social vitality.

SPECIFIC POWER REQUESTED UNDER THIS PROPOSED AMENDMENT TO CHARLESTON'S HOME RULE PLAN.

The City of Charleston respectfully requests that it be granted the power under W. Va. State Code Section 8-1-5a to amend its approved Home Rule Plan to permit the City to allow certain Alcohol Beverage Control Administration Class "A" license holders to begin serving alcohol at ten o'clock a.m. on Sundays.

CONFIRMATION OF PUBLICATION OF PUBLIC HEARING



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CITY CLERK'S OFFICE
 ERIN MCCORMICK
 PO BOX 2749
 CHARLESTON WV 25330 USA

PUBLIC HEARING
 Notice is hereby given that a Public Hearing will be held at the regular meeting of Charleston City Council on Tuesday, July 5, 2016, at 7:00 a.m. in the Council Chamber, 3rd Floor, City Hall, Charleston, West Virginia, on Bill Number 7696, authorizing an amendment to the City's Home Rule Plan to allow the sale of alcoholic beverages by certain Alcoholic Beverage Control Administration Class "A" license holders beginning at 10:00 a.m. on Sundays. Interested parties may appear at the Public Hearing and be heard with respect to Bill Number 7696 and the proposed amendment to the City's Home Rule Plan. A copy of Bill Number 7696 and the proposed amendment to the City's Home Rule Plan may be inspected in the City Clerk's Office beginning June 3, 2016, between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday.

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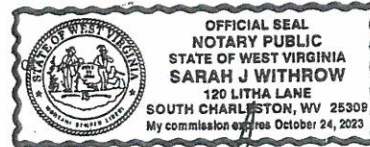
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ISSUE DATE	AD TYPE	PUB	DESCRIPTION	AD NUMBER	AD SIZE	RATE	GROSS AMOUNT	NET AMOUNT
06/03	LEGR	GZ	6/3, 6/10 PUBLIC HEAR	0631085	1X0300	9.10	27.30	27.30
			997444001		3.00			
06/10	LEGR	GZ	6/3, 6/10 PUBLIC HEAR		1X0300	9.10	27.30	20.47
			997444002		3.00		6.83-	
			LEGAL DISCOUNT 25%					
			TOTAL INVOICE AMOUNT					47.77

State of West Virginia, AFFIDAVIT OF PUBLICATION

I, Sara Withrow
 CHARLESTON GAZETTE MAIL,
 do solemnly swear that the legal notice of:
 6/3, 6/10 PUBLIC HEARING
 was duly published in said newspaper(s) at the stated price for the respective newspaper(s) and during the dates listed below:
 Subscribed and sworn to before me this 14th day of June, 2016



Notary Public of Kanawha County, West Virginia

CHARLESTON CITY COUNCIL AGENDA: JULY 5, 2016

CHARLESTON CITY COUNCIL

Regular Meeting
Tuesday, July 5, 2016
at 7:00 p.m.



Council Chamber, Third Floor
City Hall, 501 Virginia St. E.
Charleston, WV

AGENDA

CALL TO ORDER BY THE MAYOR

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC SPEAKERS AND CLAIMS

COMMUNICATIONS

PUBLIC HEARING

1. Bill No. 7696- Authorizing an amendment to the City's Home Rule Plan to allow the sale of alcoholic beverages by certain Alcohol Beverage Control Administration Class "A" license holders beginning at 10:00 a.m. on Sundays.

REPORTS OF STANDING COMMITTEES

HOME RULE

1. Bill No. 7696- Authorizing the City of Charleston to submit to the Municipal Home Rule Board a proposed amendment, attached hereto as Exhibit A, to the City of Charleston Municipal Home Rule Plan consistent with W. Va. State Code Section 8-1-5a, requesting approval to allow the sale of alcoholic beverages by certain Alcohol Beverage Control Administration Class "A" license holders beginning at 10:00 a.m. on Sundays

ORDINANCE AND RULES

1. Bill No. 7701- Amending Chapter 14, Article II, Section 14-33 of the Municipal Code of the City of Charleston for the purpose of updating the Building Code of the City of Charleston to be consistent with the recently amended State Building Code

PLANNING

1. Bill No. 7695- Amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made a part thereof, by rezoning from an I-4 Heavy Industrial District to an I-2 Light Industrial District, that certain parcels of land located at 3723, 3725 and 3727 Keller Road, Charleston, West Virginia.

FINANCE

1. Resolution No. 765-16—Agreement for Concrete Curb and Sidewalk Project
2. Resolution No. 766-16—Amendment to the Community Development Block Grant Budget
3. Resolution No. 767-18—Authorizing the Mayor or His Designee to Submit a Grant Application to the Kanawha County Public Safety Grant Program to Provide for Purchase of Two Thermal Imaging Cameras for the Charleston Fire Department
4. Resolution No. 768-16—Budget Amendment No. 1—Fiscal Year 2016-2017 (General Fund)
5. Resolution No. 769-16—Authorizing the City Manager to Execute a Transfer/ Donation Agreement with the Institute Volunteer Fire Department for Various Equipment
6. Resolution No. 770-16—Authorizing the City Manager to Execute an Equipment Transfer/Donation Agreement with the City of Clendenin for One International Dump Truck
7. Resolution No. 771-16—Authorizing Change Order No. 7 to the Design-Build Contract with BBL Carlton, LLC, in Relation to the Civic Center Expansion and Renovation Project
8. Purchase of Ford Utility Police Interceptor for Crime Scene Unit of the Charleston Police Department

REPORTS OF OFFICERS

NEW BILLS

UNFINISHED BUSINESS AND/OR MISCELLANEOUS BUSINESS

ROLL CALL

ADJOURNMENT

**THE NEXT REGULAR MEETING OF COUNCIL WILL BE
Monday July 18, 2016 at 7:00 p.m.**

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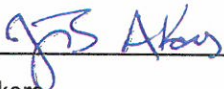
ORDINANCE AUTHORIZING SUBMISSION OF PLAN AMENDMENT



City of Charleston
Office of the City Clerk
P.O. Box 2749
Charleston, WV 25330
(304) 348-8179

I, the undersigned City Clerk of Charleston, do hereby certify that the foregoing is a true, correct and complete copy of Bill No. 7696, enacted by the City Council of the City of Charleston on July 5, 2016.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of the City, this 6 day of July, 2016.



J.B. Akers
City Clerk

Seal

Bill No. 7696 :

Introduced in Council:

June 21, 2016

Adopted by Council:

July 5, 2016

Introduced by:

Karan Ireland, Mary Jean Davis,
Becky Ceperly, Susie Salisbury,
Keeley Steele, Mary Beth Hoover,
Jack Harrison, Andy Richardson,
Richard Burka, Samuel Minardi,
Jerry Ware, Robert Reishman,
Tom Lane, Michael Clowser,
Edward Talkington

Referred to:

Home Rule Committee

- 1 **Bill No. 7696:** "A BILL authorizing the City of Charleston to submit to the Municipal
- 2 Home Rule Board a proposed amendment, attached hereto as Exhibit A, to the City of
- 3 Charleston Municipal Home Rule Plan consistent with W. Va. State Code Section
- 4 8-1-5a, requesting approval to allow the sale of alcoholic beverages by certain Alcohol
- 5 Beverage Control Administration Class "A" license holders beginning at 10:00 a.m. on
- 6 Sundays;
- 7
- 8 WHEREAS, the owners of restaurants and hotels in the City have indicated that there is a
- 9 market for brunch service on Sundays, and that current restrictions on hours of Sunday
- 10 alcohol service imposed by state law stifle Sunday morning brunch attendance; and
- 11
- 12 WHEREAS, the Charleston Convention and Visitor's Bureau and its Board of Directors,
- 13 which is composed of civic leaders and people involved in the City's hospitality and tourism
- 14 industries, fully support the City's use of Home Rule to allow earlier Sunday alcohol service
- 15 in Charleston thereby enabling restaurants and hotels in the City to be fully operational on
- 16 Sunday to enhance the City's image in the eyes of business and leisure travelers and
- 17 enrich the experiences of visitors to Charleston; and
- 18
- 19 WHEREAS, the City has determined that allowing alcohol sales at Sunday morning brunch
- 20 service within the City will produce more revenue and strengthen City businesses, increase
- 21 City business and occupation tax revenues and City/state sales tax revenues, and increase
- 22 earnings for servers and other employees working in the hotels and restaurants in the City;
- 23 and
- 24

25 WHEREAS, the City's Comprehensive Plan envisions the reinforcement of Charleston's
26 position as the region's entertainment and cultural destination, and the active promotion
27 of Charleston as a city that offers a range of lifestyle choices in order to attract new
28 residents to the City and retain its current residents; the establishment of an earlier
29 Sunday alcohol service is another way for the City to meet these goals and strengthen
30 its social vitality;

31

32 **Now, therefore, be it Ordained by the Council of the City of Charleston, West**
33 **Virginia:**

34

35 That, on behalf of the City of Charleston, the Mayor, the City Attorney and the City
36 Administration are hereby authorized and requested to submit to the Municipal Home Rule
37 Board a proposed amendment, attached hereto as Exhibit A, to the City of Charleston
38 Municipal Home Rule Plan consistent with W. Va. State Code Section 8-1-5a, requesting
39 approval to allow the sale of alcoholic beverages by certain Alcohol Beverage Control
40 Administration Class "A" license holders beginning at 10:00 a.m. on Sundays.

ATTORNEY OPINION



OFFICE OF THE CITY ATTORNEY

City of Charleston | P.O. Box 2749, Charleston WV 25330 | 304-348-8031
Writer's Fax: 304-348-0770 | Writer's email: paul.ellis@cityofcharleston.org

Paul D. Ellis
City Attorney of Charleston

July 11, 2016

To the West Virginia Home Rule Board regarding the City of Charleston's Home Rule Plan Amendment:

As City Attorney for the City of Charleston, I have reviewed West Virginia Code § 8-1-5a, Municipal Home Rule "Procedure to Amend Written Plan", City of Charleston Home Rule Plan Amendment, the City of Charleston Ordinance authorizing submission of the Plan Amendment and other documents related thereto (collectively, the "Amendment") as I have deemed appropriate and 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 in the Amendment, it is my opinion that the Amendment complies with the required statutory requirements in that the Amendment does not contain any proposed changes to ordinances, acts, resolutions, rules, or regulations that are contrary to the:

- i. US or WV Constitutions,
- ii. Federal Law,
- iii. Chapter 60A – A Uniform Controlled Substance Act,
- iv. Chapter 61 – Crimes and Their Punishment,
- v. Chapter 62 – Criminal Procedure,
- vi. Prohibited acts as set forth in § 8-1-5a(i) and (j).

The Municipal Home Rule Board may rely upon this opinion.

Sincerely,

Paul D. Ellis
City Attorney of Charleston

EXHIBIT A – SPECIFIC STATE LAWS, POLICIES, RULES, OR REGULATIONS

W. Va. State Code § 60-7-12. Certain acts of licensee prohibited; criminal penalties

(a) It is unlawful for any licensee, or agent, employee or member thereof, on such licensee's premises to:

(5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of three o'clock a.m. and one o'clock p.m., or, between the hours of three o'clock a.m. and ten o'clock a.m. in any county upon approval as provided for in section three-pp, article one, chapter seven of this code, on any Sunday;

W. Va. State Code § 60-8-34. When retail sales prohibited.

It shall be unlawful for a retailer, farm winery, wine specialty shop retailer, private wine bed and breakfast, private wine restaurant or private wine spa licensee, his or her servants, agents or employees to sell or deliver wine between the hours of two o'clock a.m. and one o'clock p.m., or, it shall be unlawful for a winery, farm winery, private wine bed and breakfast, private wine restaurant or private wine spa, his or her servants, agents or employees to sell wine between the hours of two o'clock a.m. and ten o'clock a.m. in any county upon approval as provided for in section three-pp, article one, chapter seven of this code, on Sunday, or between the hours of two o'clock a.m. and seven o'clock a.m. on weekdays and Saturdays.

W. Va. State Code § 11-16-18. Unlawful acts of licensees; criminal penalties

(a) It shall be unlawful:

(1) For any licensee, his, her, its or their servants, agents or employees to see, give or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected, nonintoxicating beer or cooler on weekdays between the hours of two o'clock a.m. and seven o'clock a.m., or between the hours of two o'clock a.m. and one o'clock p.m., or a Class A retail dealer who sells nonintoxicating beer for on premises consumption only between the hour of two o'clock a.m. and then o'clock a.m. in any county upon approval as provided for in section three-pp, article one, chapter seven of this code, on any Sunday, except in private clubs licensed under the provision of article seven, chapter sixty of this code, where the hours shall conform with the hours of sale of alcoholic liquors;