



## CORPORATION OF SHEPHERDSTOWN

104 NORTH KING STREET  
P.O. Box 248  
SHEPHERDSTOWN, WEST VIRGINIA 25443-0248  
TEL: (304)876-2312  
FAX: (304) 876-1473

March 23, 2016

West Virginia Municipal Home Rule Board  
West Virginia Home Rule Pilot Program  
State Capitol Complex, Building 6, Room 553  
Charleston, West Virginia 25305

Re: Application of the Corporation of Shepherdstown  
West Virginia Municipal Home Rule Pilot Program Phase III

Ladies and Gentlemen:

It is my honor and privilege to submit to you the enclosed Application of the Corporation of Shepherdstown to the WV Municipal Home Rule Pilot Program Phase III. The Corporation of Shepherdstown, the oldest town in West Virginia, is a historic and picturesque municipality. The enclosed Application explains that, once granted Home Rule authority, the Town will allow for Sunday brunch to include alcoholic beverages, allocate funding to attract tourists, enact a sales tax and reduce the Town's B&O tax, permit liens to be placed on property for delinquent fees owed the Town, purchase tax liens on delinquent properties, reduce speed limits and place other restrictions on State roadways, provide Town officials with greater regulatory control over private clubs, provide its code enforcement officials on-the-spot citation power, allow for the issuance of liens on property for amounts expended by the Town eliminating eyesores on such property, provide for expedient contracting with other jurisdictions, and impose fees upon persons convicted in Town Court.

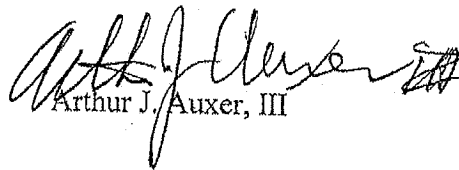
The Town is a close-knit community of residents and business owners. To ensure that moving forward with Home Rule is in the best interest of the Town, the Town Council not only held the required, advertised, public hearing, but also provided an additional opportunity for Town residents and business owners to provide feedback and insight regarding the Home Rule plan at its next Town Council meeting. Additionally, the Town hosted an ABCA official to discuss with constituents the implications of the provision contained within the plan addressing the grant of greater ABCA enforcement authority to Town officials. Overall, after much discussion and taking into account the many comments from Town citizens and key

stakeholders, the Town is excited to move forward with its application for Home Rule authority as part of the WV Municipal Home Rule Pilot Program Phase III.

Each of the Town's proposed actions will allow the Town to carry out its duties in a more cost effective, efficient, and timely manner and foster economic success, allowing the Town to better support and contribute to the economic progress of the State of West Virginia. Municipal self-governance will provide the Corporation of Shepherdstown the opportunity to better help itself function as an autonomous municipality while also maintaining mutually beneficial relationships with nearby jurisdictions.

On behalf of the Shepherdstown Town Council, I respectfully request that you accept this Application of the Corporation of Shepherdstown and select the Corporation of Shepherdstown for participation in the West Virginia Municipal Home Rule Pilot Program Phase III.

Very truly yours,

  
Arthur J. Auxer, III



West Virginia Municipal Home Rule Pilot Program Phase III

# Application of the Corporation of Shepherdstown





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## Municipal Home Rule Pilot Program Phase III

### APPLICATION CHECKLIST

<b>SECTION I: APPLICANT INFORMATION</b>	
Page No.	
1	General Information
1	Municipal Classification
3-11	Specific Issue(s) to be Addressed
1	Issue(s) Category: Tax/Organization/Administrative/Personnel/Other

<b>SECTION II: NARRATIVE</b>	
Page No.	
3-11	Specific state laws, policies, acts, resolutions, rules or regulations that are preventing the municipality to carry out duties in the most cost effective, efficient, and timely manner.
3-11	Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.
3-11	Proposed solution(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include: <ol style="list-style-type: none"> <li>1) Proposed solution(s) in one of the five areas (tax/administrative/organization/ personnel/other)</li> <li>2) If revenue related, estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.</li> </ol>

<b>SECTION III: AFFIDAVITS</b>	
Page No.	
12	Hearing Mandate Verification (and draft minutes of public hearings)
13	Publication Mandate Verification
14	Ordinance Authorizing Submission of Plan
15	Fiscal Impact Worksheets/Formulas (if revenue related)
16	Attorney Opinion (application complies with statutory requirements)
17	State of West Virginia Fees Statement (none outstanding)



**Municipal Home Rule Pilot Program Phase III  
APPLICATION**

<b>SECTION I: APPLICANT INFORMATION</b>	
<b>A. General Information</b>	
Name of Municipality: Shepherdstown	
Certifying Official: Arthur J. Auxer	Title: Mayor
Contact Person: Charles F. Printz, Jr.	Title: Town Attorney
Address: 104 North King Street	
Town, State, Zip: Shepherdstown, WV 25443	
Telephone Number: (304) 876-2312	Fax Number:
E-Mail Address: clerk@shepherdstown.us	
2010 Census Population: 1,734	
<b>B. Municipal Classification</b>	
<input type="checkbox"/> Class I <input type="checkbox"/> Class II <input type="checkbox"/> Class III              X Class IV	
<b>C. Category of Issues to be Addressed (please attach descriptions for applicable categories)</b>	
X Tax <input type="checkbox"/> Organization              X Administration <input type="checkbox"/> Personnel              X Other	

<b>SECTION II: NARRATIVE (written plan, including the following)</b>
<p>Specific state laws, policies, acts, resolutions, rules or regulations that are preventing the municipality to carry out duties in the most cost effective, efficient, and timely manner.</p> <p>Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.</p> <p>Proposed solution(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include:</p> <p>3) Proposed solution(s) in one of the five areas (tax/administrative/organization/personnel/other)</p> <p>4) If revenue related, estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.</p> <p align="center"><i>Please see attached.</i></p>

<b>SECTION III: AFFIDAVITS</b>
Hearing Mandate Verification Publication Mandate Verification Ordinance Authorizing Submission of Plan Fiscal Impact Worksheets/Formulas (if revenue related) Feasibility Study (if taxes are proposed) Attorney Opinion (application complies with statutory requirements) State of West Virginia Fees Statement (none outstanding)



## **Section II: Narrative**

### ***Introduction/Executive Summary:***

Historic and picturesque Shepherdstown, West Virginia is the oldest town in West Virginia, chartered by the Virginia General Assembly in 1762. By area, Shepherdstown occupies 0.37 of a square mile, and has 1,734 permanent residents. In addition to its full-time residents, Shepherdstown is home to Shepherd University, which opened with 42 students in 1871 and has grown to serve over 4,000 undergraduate and graduate students.

Shepherdstown is culturally rich, annually hosting the Contemporary American Theater Festival (CATF). Over the past 24 years, CATF has produced 105 new plays, and in 2014 alone, the CATF drew 14,135 attendees from 35 states. Shepherdstown is also home to the American Conservation Film Festival, which annually celebrates independent, historic, publicly funded and Appalachian films.

Along with arts, Shepherdstown is a vibrant community steeped in history - the entire Town is part of the National Register of Historic Places. Visitors can enjoy painstakingly preserved Federal and Greek Revival architecture, and learn about how the many buildings of the Town served as one large hospital after the Civil War Battle of Antietam. Shepherdstown's location on the banks of the Potomac River provides scenic views and river access for tubing, kayaking, and fishing.

A close-knit community, Shepherdstown finds cause for celebration throughout the year, hosting weekly farmer's markets, the Shepherdstown StreetFest, and DogFests during the summer, Boo!Fest at Halloween, and Christmas in Shepherdstown in December, among many more events. The prime location for these festivals, Shepherdstown's main street, German Street, is lined with quaint shops and gourmet restaurants alike.

Shepherdstown was a finalist in Budget Travel's America's Coolest Small Towns contest, was named as one of West Virginia's Best Small Towns by WV Living, was listed as a Great Small Town Near Washington, DC by the Washingtonian, and was included as one of the South's Best Small Towns by Southern Living.

Shepherdstown is a gem in the Eastern Panhandle, but like any other community, its successes are tempered by challenges. Granting Home Rule authority to Shepherdstown's Town Council will help address many of the unique trials faced by the Town, allowing it to continue to thrive.

Shepherdstown requests that, as a Home Rule municipality, in addition to general administrative efficiencies, it be permitted to self-regulate in three key and, at times, unique areas: Marketing/Revenue Generation and Collection, Public Safety, and Property Maintenance.

Specifically, in terms of marketing and revenue, the Town will permit restaurants to serve alcohol on Sundays before 1:00 p.m., creating a boutique brunch industry. Further, the Town will allocate more funds than currently permitted to marketing and tourism, and impose a 1% sales tax on sales within the Town to generate revenue.



As a college town, Shepherdstown is particularly concerned with public safety. As a Home Rule municipality, the Town will lower speed limits, and regulate the locations of crosswalks to better ensure safe vehicle operation and pedestrian travel. The Town will also exercise similar authority to the ABCA in terms of policing underage drinking.

Finally, Shepherdstown's allure depends on the continued maintenance of its beautiful and historic buildings. As a Home Rule municipality, Shepherdstown will exercise many of the property maintenance powers, such as on-the-spot citations, enjoyed by most other cities and towns participating in the program.

## 1. *Marketing; Revenue Generation and Collection.*

### A. **Regulate When Restaurants May Serve Alcohol to Become a Sunday Brunch Destination.**

i. **Problem:** West Virginia Code prohibits restaurants and bars from serving alcohol before 1:00 p.m. on Sundays. However, nearby Maryland and Virginia permit sales of alcohol at least two hours earlier, at 11:00 a.m. Shepherdstown is home to a popular inn and several dining establishments that lose significant business as patrons travel across state lines to enjoy alcoholic beverages with their Sunday brunches.

ii. **Authority:** W. Va. Code § 60-7-12(a)(5) prohibits any private club licensee, or agent, employee or member thereof, from selling beer, wine, or alcoholic liquor between the hours of 3:00 a.m. and 1:00 p.m. on Sundays. Further, W. Va. Code § 60-8-34 prohibits a private wine bed and breakfast or restaurant from selling wine between the hours of 2:00 a.m. and 1:00 p.m. on Sundays. W. Va. Code § 11-16-18(a)(1) provides that it shall be unlawful for any licensee to sell beer between 2:00 a.m. and 1:00 p.m. on Sundays (except that private clubs licensed under Article 7, Chapter 60 of the West Virginia Code shall operate within hours conforming with the hours of sale of alcoholic liquor).

iii. **Solution:** The Town will enact an ordinance permitting any private club licensee or private wine bed and breakfast or restaurant to serve beer, wine, and alcoholic liquors after the hour of 10:00 a.m. on Sundays.

iv. **Other Notes:** A "brunch bill" to achieve this result was passed by the West Virginia Legislature, with support from the delegation representing Shepherdstown, as well as restaurants in the Town, but with the requirement that each county hold a vote to determine whether alcohol may be sold in that county prior to 1:00 p.m. on Sundays. Thus, because this new law does not, at this time, provide certainty regarding the ability to sell alcohol on Sundays before 1:00 p.m., the Town continues to request the authority through Home Rule to regulate the time, on Sundays, at which restaurants may serve beer, wine, and liquor. The ability to serve alcohol before 1:00 p.m. on Sundays should attract diners to local establishments who may otherwise travel to Maryland or Virginia for brunch, stimulating tourism and the local economy.





**B. Allocate Funding for Marketing and Tourism.**

i. Problem: The Town relies upon tourism as a key part of its economy; but currently, the Town is restricted from providing adequate funding for marketing to attract visitors.

ii. Authority: W. Va. Code § 8-12-5(52) permits the Town to “appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors.”

iii. Solution: The Town will pass an ordinance permitting appropriation and expenditure for marketing and tourism in an amount in excess of the previously imposed cap of twenty-five cents per capita per annum. Increased tourism will result in increased revenue for merchants located in the Town, boosting the local economy and providing increased sales tax revenue for the Town under the sales tax to be established.

iv. Other Notes: Similar requests were made in applications for acceptance in the Home Rule program by Clarksburg, Grafton, and Shinnston.

**C. Impose a 1% Sales Tax.**

i. Problem: Presently, the Town is only able to generate revenue via taxation by imposing a municipal business and occupation (“B&O”) tax or by imposing a sales tax; State Code requires that the two taxes be mutually exclusive. The Town currently imposes a B&O tax on utilities. In addition to the B&O tax imposed on utilities, the Town wishes to enact a sales tax to generate revenue.

ii. Authority: W.Va. Code § 8-13C-1 et seq. contemplates the imposition of a sales tax by municipalities either for pension relief or as an “alternative municipal sales tax” at a rate not to exceed one percent. However, a municipality may only impose such a sales tax if it completely eliminates its B&O tax. W.Va. Code § 8-13C-4(b). Under W.Va. Code § 8-1-5a(k)(6), municipalities participating in the Municipal Home Rule Pilot Program do not have the authority to pass an ordinance under Home Rule pertaining to taxation, except that a participating municipality may enact a municipal sales tax up to one percent if it reduces or eliminates its municipal B&O tax.

iii. Solution: The Town proposes a five percent reduction in its B&O tax on utilities to a rate of 3.8% percent, while imposing a one percent sales tax on all taxable sales under the West Virginia Code. Because the Town does not currently impose a B&O tax on retail sales, unlike other municipalities that have applied to participate in the Home Rule Program, the Town does not have a reliable measure of average sales with which to generate a revenue projection. However, the Town believes that it can generate the necessary sales tax so as to not have a budget shortfall resulting from the reduction in B&O tax.



iv. Other Notes: Most municipalities that have included a sales tax component in their applications to participate in the Home Rule program already have in place a B&O tax on most, if not all, eligible categories. Shepherdstown differs from those municipalities in that it only imposes a B&O tax on utilities. This distinction comes into play when generating a revenue projection. Other municipalities have, as a result of their collection of B&O tax, an idea of gross receipts of the businesses set forth within their borders. Shepherdstown, conversely, cannot create a revenue projection with information already available because it has no way to determine gross sales within its corporate limits. The Town is in communications with the State Tax Department to ascertain this information, and will supplement this application once provided with necessary information.<sup>1</sup>

v. Fiscal Impact Worksheet: See attached.

### **D. Impose Liens for Delinquent Town Fees.**

i. Problem: While the Town of Shepherdstown may presently issue liens for delinquent police, fire, and street fees, it is unable to issue liens for various other Town fees. Thus, attempted collection of delinquent Town fees creates an administrative hassle that places a burden on the Town's limited resources.

ii. Authority: W.Va. Code § 8-13-13(a) allows a municipality which furnishes any essential or special municipal service, including, but not limited to, police and fire protection, parking facilities on the streets or otherwise, parks and recreational facilities, street cleaning, street lighting, street maintenance and improvement, sewerage and sewage disposal, and the collection and disposal of garbage, refuse, waste, ashes, trash and any other similar matter, to provide by ordinance the installation, continuation, maintenance, etc. or the service, regulate such service, and impose reasonable rates, fees and charges.

However, subsections (c) and (d) provide that such municipality may only file liens on real property located within the municipal corporate limits for unpaid and delinquent fire, police or street fees. Specifically, W.Va. Code § 8-13-13(d) provides that the municipality "shall not" have a lien on any property as security for payments due unless such payments relate to fire, police, or street fees.

iii. Solution: The Town will pass an ordinance permitting it to issue liens for various categories of delinquent Town fees, allowing it to collect funds owed to the Town by property owners. This ordinance will potentially tie into the ability of Town officials to issue citations for certain violations as contemplated in Section 3.A, below, and to take action in regard to eyesores and dilapidated buildings, as contemplated in Section 3.B., below, providing a greater likelihood of receiving compensation for taking action to address such detrimental issues.

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<sup>1</sup> Note - despite requests made to the State Tax Department (see attached letter from Mayor Auxer to the WV State Tax Commissioner), the Town did not receive the necessary information to use for a revenue projection by the time this Application was approved by the Town Council and submitted to the Home Rule Board.



iv. Other Notes: Charleston, Huntington, and Wheeling reported that implementation of the authority to issue liens for delinquent Town fees provided collection of significant amounts of delinquent fees and increased compliance with payment of fees assessed.

**E. Purchase Tax Liens on Properties Subject to Delinquent Property Taxes; Provide Right of Redemption to the Town.**

i. Problem: Properties that are habitually dilapidated or in violation of municipal and building codes may also be subject to delinquent tax liens that are sold pursuant to West Virginia Code § 11A-3-1 et seq. Purchasers of these tax liens may allow the violations and dilapidated conditions to continue to exist, and the property taxes to go delinquent multiple times without correcting the problems. Also, on properties on which the Town has been required to take corrective actions or for which the owners owe delinquent fees, the associated liens filed by the Town are subject to foreclosure under West Virginia Code § 11A-3-1 et seq., eliminating an opportunity for the Town to obtain payment of funds due under those liens.

ii. Authority: Under W.Va. Code §11A-3-56(b), “[a]ny person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself to redeem the tax lien on all of such real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of such other person for the amount paid to redeem such interest.”

iii. Solution: The Town will pass an ordinance: 1) allowing the purchase by the Town of tax liens for property within the Town of Shepherdstown, 2) providing that, for properties on which the Town of Shepherdstown has placed liens for municipal services or payment due for corrective actions for code violations, the Town, subject to any right of the property owner to redeem, be allowed to redeem the subject property, and, if the property is not redeemed by the owner or any other party who has a right to redeem, that the Auditor of the State of West Virginia convey the subject property to the Town of Shepherdstown, upon payment of the amount required under W. Va. Code § 11A-3-23. This will allow the Town of Shepherdstown to recover amounts expended by the Town for services and corrective actions, and allow the Town to ensure potentially dilapidated properties are well-maintained in a manner that contributes to the historic nature of the Town.

iv. Other Notes: Similar provisions were requested in applications for acceptance in the Home Rule program by Martinsburg, Beckley, Elkins, and Oak Hill.

**2. Public Safety: Regulation of Roads and Traffic Safety/Increased Enforcement Powers Related to ABCA-licensed Establishments.**

**A. Reduction of Speed Limits and Placement of Other Restrictions on State Roadways within Municipal Boundaries.**

i. Problem: Several areas of the Town are conducive to operation of vehicles passing through Town at excessive speeds. The authority governing the Town’s ability



to set or alter speed limits and otherwise place restrictions upon roadways is conflicting, and the Town wishes to reduce the speed limits in certain areas within the Town's corporate limits and create other restrictions on roadways, such as implementing traffic calming devices.

ii. Authority: The Town has plenary power and authority "(4) to regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipalities . . . (13) to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome. . . [and] (23) to provide for the elimination of hazards to public health and safety . . ." W. Va. Code § 8-12-5.

The Town has the power to reduce the speed limit at an intersection based upon an engineering and traffic investigation. W. Va. Code § 17C-6-3(a). Additionally, the Town may decrease the 25 mph limitation in local dedicated rights-of-way in a residential district or portions thereof. W. Va. Code § 17C-6-3(d). However, in either case, the alteration of a limit on state highways or extensions thereof must be approved by the commissioner of highways. W. Va. Code § 17C-6-3(e).

W. Va. Code § 17C-7-12(a) permits local authorities to place certain restrictions over roadways under those authorities' jurisdictions, but does not permit such restrictions to be placed over roadways under the jurisdiction of the State. Further, the Town has the ability to "provide for the opening and excavation of . . . crosswalks . . ." pursuant to W. Va. Code § 8-12-5(2).

iii. Solution: The Town will pass an ordinance providing it with the authority to set speed limits on state roadways within municipal boundaries, and change, modify, or impose other restrictions such as placement of road signs and crosswalks and closure of roads, and implementation of traffic calming devices. Locally elected officials, who are more aware of facts and circumstances that may result in dangerous roadways, can have a greater hand in determining the appropriate speed limits for roads within the Town. Further, coordination with the commissioner of highways will no longer be necessary, permitting any necessary changes to occur in a more efficient and expedient manner.

iv. Other Notes: Nitro and Weirton also included in their Home Rule applications requests for clarification of the authority granted to municipalities to regulate speed within the municipalities and place other restrictions upon roadways.

### **B. Ability for the Town of Shepherdstown to exercise the same enforcement authority as the ABCA/regulate locations of establishments selling alcohol.**

i. Problem: The Town of Shepherdstown is a college town; consumption of alcohol leads to requirements for increased police presence. Not only are officers tasked with addressing underage consumption and public intoxication, but because the Town is on the Maryland border, it receives an influx of consumers on weekend evenings/early mornings who leave Maryland bars after last call at 2:00 a.m. to patronize West Virginia bars that close at 3:00 a.m.





Despite the problems presented by underage drinking and the influx of bar patrons that arrive on weekends after 2:00 a.m., the Town has essentially the same authority over bars as it would over any other private dwelling. Conversely, as a requirement of the bars' licensure, the ABCA has considerably greater authority, including, for example, the ability to investigate whether underage patrons are being served. The Town wishes to be able to act with the same authority as the ABCA, and not be precluded by the ABCA from taking action regulating aspects of private clubs. This authority would include regulation of other aspects of the operation of private clubs, such as regulating the location in which bars may operate.

ii. Authority: W. Va. Code St. R. § 175-2-4 governs the operation of private clubs, regulating the hours of operation and of sale of alcoholic beverages and requiring a licensee to, at reasonable times, permit the immediate inspection of licensed premises by the Commissioner to ensure that the laws and rules of the State of West Virginia are enforced. Much like any private establishment, the Town Police have no right of inspection or right of entry without probable cause.

Additionally, W. Va. Code § 11-16-8(a)(5) requires, when making application for a license to sell nonintoxicating beer, that the applicant affirm that the place in which the beer will be sold is not within three hundred feet of a school or church.

iii. Solution: The Town will enact ordinances exercising authority similar to that of the ABCA, such as granting to its police force authority to, among other actions, investigate underage drinking in private clubs and enforce the set last call and closing times of such clubs. Further, the Town will enact an ordinance permitting it to waive the requirement that any establishment requesting a license to sell nonintoxicating beer be located three hundred feet from any school or church.

iv. Other Notes: Similar provisions were requested by Martinsburg and Weirton in their respective Home Rule applications. Subsequently, Elkins requested the authority to eliminate distance requirements between churches and restaurants/bars.

### 3. *More Efficient Exercise of Property Maintenance Authority.*

#### A. **Grant of authority to Shepherdstown Town Code Enforcement Officials to immediately issue citations for external sanitation violations and common nuisances.**

i. Problem: Shepherdstown's charm depends on the maintenance of its beautiful and historic buildings. Presently, State Code does not contemplate the ability for a code enforcement official to issue citations "on the spot" for external sanitation violations and common nuisances, but rather would require the official to send preliminary notices and provide an opportunity to respond. This process would require additional manpower. Further, the lack of immediate citation power could result in decreased compliance by property owners.

ii. Authority: W.Va. Code § 8-12-16 allows municipalities to adopt ordinances regulating the repair, closing, demolition, etc. of dwellings or buildings unfit for



human habitation. Additionally, municipalities may adopt ordinances requiring the owner of any such dwelling or building to pay for the costs of repairs, alterations, improvements, demolition, etc. The municipality then may file a lien against the real property for the costs incurred by the municipality, and file a civil action for such costs and reasonable attorneys' fees.

W.Va. Code § 8-12-5(23) vests municipalities with the authority to, by ordinance or resolution, provide for the elimination of hazards to public health and safety and abate or cause to be abated anything which a majority of the governing body finds to be a public nuisance, but does not provide authority for granting citation powers to code enforcement officials.

iii. **Solution:** The Town will enact an ordinance providing for code enforcement officers with the authority to issue "on the spot" citations for certain violations. This citation power will extend to sanitation, drainage, sidewalks in disrepair, high weeds, grass, or both, graffiti, exterior garbage accumulation, open storage in residential districts, and nonresident recreational vehicles. These citations may be issued to the owner, lessee, sublessee, tenant, occupant, or agent or manager thereof, presently having control over the property in question, and an opportunity to respond will be afforded to the cited party by contesting the citation in municipal court.

iv. **Other Notes:** H.B. 4461, H.D., 2012 Reg. Sess. (W.Va. 2012) was intended to provide a citation process for municipalities to address certain external sanitation and common nuisance violations but never came to a vote. Charleston has provided similar authority to its code enforcement officers and reports faster compliance with external sanitation violations and common nuisances. See Special Report: Municipal Home Rule Pilot Program, pg. 12. Of sixty-three citations issued, two were appealed to Municipal Court. Subsequently, similar provisions were requested by several other Home Rule cities, such as Martinsburg, Beckley, Bluefield, Buckhannon, Charles Town, Clarksburg, Elkins, Morgantown, South Charleston, and St. Albans.

### **B. Liens for Actions Taken in Regard to Eyesores and Dilapidated Buildings.**

i. **Problem:** The Town has the ability to repair, alter, or demolish property and/or mow overgrown grass, but is limited to sending a bill to the property owner to attempt to recoup the money expended taking such action, without any further authority for collection.

ii. **Authority:** W.Va. Code § 8-12-16 governs the adoption of ordinances regulating the repair, closing, demolition, etc., of dwellings or buildings unfit for human habitation. It allows every municipality to file a lien against real property for an amount that reflects all costs incurred by the municipality for repairing, altering, improving, closing, demolishing, etc. but requires that a lawsuit be filed in order to obtain such lien.

Additionally, W.Va. Code § 8-12-5(23) vests municipalities with the authority to, by ordinance or resolution, provide for the elimination of hazards to public health and safety and abate or cause to be abated anything which a majority of the governing body finds to be a public



nuisance, but does not provide any authority for filing liens against property for fees incurred in removing such hazards or nuisances.

iii. Solution: The Town will enact an ordinance permitting it to, after due notice, repair, alter or demolish property, mow overgrown grass, and collect unlawful accumulations of garbage and rubbish, and, without court approval, place a lien on the property for the amount expended by the Town in taking such action.

iv. Other notes: Wheeling has reported the issuance of several dozen liens for property maintenance, such as mowing lawns. See Special Report: Municipal Home Rule Pilot Program, pp. 12-14. Similar provisions were requested by Beckley, Bluefield, Martinsburg, Elkins, Oak Hill, and St. Albans.

#### 4. *Administrative Efficiency and Support.*

##### A. **Ability to Enter into Contracts with Other Jurisdictions by Resolution.**

i. Problem: If the Town of Shepherdstown wishes to contract with another jurisdiction, it must go through the process of enacting an ordinance, requiring several readings of a proposed ordinance at Town Council meetings and delaying the entry into such contract by several weeks.

ii. Authority: W.Va. Code § 8-11-3(10) indicates that, except where otherwise provided by code, actions of a municipality in providing for a contractual or other agreement with another jurisdiction shall be by ordinance. W. Va. Code § 8-11-4(a)(1) requires that an ordinance be read by title at no less than two meetings of the Council, with at least one week between each meeting. The Town is not required to pass an ordinance for the entry into agreements with non-governmental entities.

iii. Solution: The Town would no longer be subject to the requirement set forth in W.Va. Code § 8-11-3(10) that it enact ordinances to enter into contracts with other jurisdiction, but rather may contract with another jurisdiction via resolution, saving time expended going through the process of enacting an ordinance and expediting receipt by the Town of the services or agreement obtained through such contract.

iv. Other Notes: By H.B. 4312, H.D., 2012 Reg. Sess. (2012), the House attempted to pass a bill amending W.Va. Code § 8-11-3 by removing subsection 10, but the bill appears to have died in the Judiciary Committee. Charleston reports that, as a result of its proposal to allow contracts with other jurisdictions via resolution, thirty-five contracts have been approved at least two weeks faster than would have otherwise occurred. See Special Report: Municipal Home Rule Pilot Program, pg. 13. Similar provisions were requested by several other municipalities in their applications for participation in the Home Rule program.

##### B. **Fee to be Imposed Upon Persons Convicted in Town Court.**



## Corporation of Shepherdstown

i. **Problem:** The Town prosecutes many violations of Town ordinances in its municipal court, which holds court monthly. In 2015, an average of 20 defendants per month pled guilty to or were convicted of misdemeanor offenses. The municipal court would benefit greatly from additional funds to incorporate newer technology, permitting the court to function more efficiently. For example, with additional funds, the Town could purchase courtroom technology such as a portable scanner/printer or laptop. However, the Town does not have authority to impose additional costs on defendants to support the municipal court.

ii. **Authority:** No authority currently exists permitting a municipality to impose court costs that specifically benefit the municipal court. W. Va. Code § 8-10-2 provides for the establishment of municipal courts for municipalities. W. Va. Code § 8-11-1(d) permits additional costs in the amount of forty-two dollars (\$42.00) for moving violations and jailable offenses, but of those monies, forty dollars (\$40.00) must be paid into the regional jail and correctional facility development fund in the State Treasury, and two dollars (\$2.00) may be retained as administrative costs by the municipality. W. Va. Code § 8-11-1b permits the imposition of additional costs in the amount of fifty-five dollars (\$55.00) on defendants convicted of certain driving under the influence offenses, but the additional costs are to be deposited in the general revenue fund of the municipality.

iii. **Solution:** The Town will pass an ordinance providing for the imposition of additional costs, proposed to be between \$3.00 and \$5.00, to be collected by the municipal court clerk and used for the advancement of technology in the Town's municipal court.

iv. **Other Notes:** Morgantown included in its application a request to impose a fee, proposed to be between \$3.00 and \$5.00, to be assessed against each person convicted of a crime, which fee would remain with and be used for the operation of the municipal court.

v. **Revenue projection:** In 2015, defendants plead guilty to or were convicted of 257 offenses in Shepherdstown municipal court. If the Town imposes a \$5.00 fee on citations paid, similar numbers of convictions in future years will result in approximately \$1,285 of annual revenue to be used for municipal court expenses.





# Corporation of Shepherdstown

**PART III**  
**HEARING MANDATE VERIFICATION (AND DRAFT MINUTES OF BOTH 2/23/16 AND**  
**3/8/16 PUBLIC MEETINGS)**

AFFIDAVIT OF PUBLIC HEARING

STATE OF WV  
COUNTY OF Jefferson, TO-WIT:

I, Lori Robertson, having been duly sworn, do hereby state as follows:

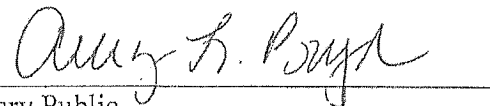
1. I am over 18 years of age and am the Town Recorder for the Corporation of Shepherdstown.
2. A copy of the Corporation of Shepherdstown's proposed Home Rule Plan, contained within its application to the WV Municipal Home Rule Pilot Program Phase III, was made available for public inspection at the Shepherdstown Town Hall, 104 North King Street, Shepherdstown, WV 25443, each business day during regular business hours, beginning January 11, 2016, up to, and including, February 23, 2016.
3. A public hearing was properly noticed and held at the aforementioned Shepherdstown Town Hall on the City of Shepherdstown's proposed Home Rule Plan on February 23, 2016.

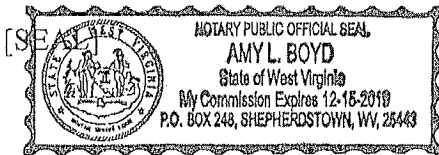
Further Affiant sayeth not.

  
Lori Robertson

Taken, subscribed and sworn to before me this 22 day of March, 2016.

My commission expires: December 15, 2019

  
Notary Public



**Shepherdstown Special Town Council Meeting Minutes**  
**Tuesday February 23, 2016**  
**6:30 p.m. – Town Hall**  
**DRAFT**

**Present:** Jim Auxer (Mayor), Lori Robertson (Recorder), Karene Motivans, Jim Ford, Wanda Smith, and David Rosen.

**Absent:** Bane Schill

**Staff:** Amy Boyd, Chief Mike King, and Officer Todd Epperley

**Visitors:** Christ Stroeck, Pam Berry, Greg King, Jason Murphy, Robert Mitchell, Emma Casale, Adam Booth, Ian Workman, Molly Kramer, Karly Lotin, Sue Kennedy, Aaron Blessing, Emmeitt Keller, Jan Hafer, Karl Hafer, Jr., Lillian Potter Saum, Todd Cotgreave, Jessie Shanhotlz, Bernie Somers, Larry Cumbo, Catie Delligatti, Judith Platz, Deb Tucker, Dakota Crawford, Lydia Johnson, Tim Smith, Betty Wang, Mark Everhart, Christie Ence, Carol and Erwin Asam, Alisha Hamlin, Christain Asam, Press Room, Town Run, Jennifer Haynes, Judy Shepherd, George Moody, Jillian Emmerich, Daniel Tait, Dan Saum, Lauren Duh, Steve Ayraud, Maria Allen, Sarah Myers, Paris Burlison, Mary Stanley, David Asam, Eric Lewis, Joy Lewis, Dab Luksz, and Kyle Bullen.

**Agenda Items 1 -Call to order (vote required):**

Call to order by Mayor Auxer at 6:30 pm.

Mayor - – **If there are no objections the agenda of February 23 is approved. None noted.**

**Agenda Item 2 – Open public hearing for the proposed Home Rule Plan:**

Mayor – explained the logistics of the meeting allowing everyone who wants to speak 2-3 minutes. In WV, often we don't have a say to what happens around us. Home Rule (HR) allows the Corporation of Shepherdstown to have a say above and beyond Charleston. HR allows us to self govern. Introduced Catie Delligatti.

C. Delligatti – stated she is one of the town's attorneys with Bowles Rice, and gave a detailed explanation of Home Rule. Again, self-governance other than what the state code says. She explained the timeline. If the application is accepted by the HR Board, the town will hold public hearings on any aspect of the application, then have the required readings to adopt the ordinance. One aspect is the 1% sales tax. The town needs a source of revenue as available sources of money are drying up. To date, 12 municipalities have instituted a 1% sales tax, and no has complained. The 1% is passed off to the customer.

The Mayor introduced Eric Lewis.

E. Lewis – is a Certified Public Accountant, is the outsourced financial man for the Town of Bolivar for 8 years. Bolivar decided on a sales tax instead of a B&O (Business & Occupation) tax. B&O tax is tough on businesses. It is based on gross revenue without regard to expenses. A business could be losing money and still owe the tax. A 1% sales tax however is passed on to the consumer. In this case a total of 7% sales would go to Charleston, then after they take a small cut, send the rest of the 1% back to Shepherdstown. Most people are used to paying such a sales tax. The 1% sales tax is no more work for the business owner as they are already filing the WV Sales and Use Form. A B&O tax requires an extra form, so more paperwork, time, and work. Other towns are moving toward a 1% sales tax. Shepherdstown has a B&O on utilities (electric) only (not water), so instituting a 1% sales tax is easy.

The Mayor opened the floor to comments after stating that a B&O tax on sales is currently not on the table. State your name and where you're from:

D. Tucker (town)- receptive to 1% sales tax as other surrounding areas are doing it too. Wants to see how the money will be spent associated with the tax, if staff will be expanded. Maybe lower the fee for parking tickets.  
Mayor – not expanding staff. Video Lottery is down 31%. We just spent \$41K on snow removal.

M. Everhart (town)– looked at a sales tax study that shows a 1% = a 4% decrease in sales with the hardest hit being border cities, low income, students, and service workers. Would like to see an impact study and how the funds (1%) will be spent. Currently, traffic cameras are illegal in WV,



we would be the first, and that could lead to possible lawsuits. Alcohol sales are crucial to the survival of the bar industry between 2am-3am.

M. Allen (town) – the proposed Sunday time change to purchase alcohol to 10am is bait in order to push more through for the ABC item in the application. This could cause more problems in town to give the police more power to regulate ABC laws, they do fine now. The 1% tax hits those who can't afford an extra 1% hard. She has people complain about the added 1% tax from other towns.

P. Berry (was a 20 year resident, not right now) – sales tax are generally painless, but effect the poor. Has concerns about marketing and advertising. It reads like the town can collect money in any amount, .25 per capita. The businesses should be part of that discussion.

J. Ford – this just allows us to spend it differently, can spend more. We won't be collecting more.

G. King – not to concerned, will see how it goes.

J. Murphy (Heatherfield) – Shepherdstown is the most expensive in the area – it's nice but not worth the added 1% tax. SU students cannot afford to shop here. The biggest draw are SU students and out of towners. No longer a drinking & driving town. Speed cameras target everyone, the town is too classy for them. Local businesses are the lifeblood. Mayor – cameras got thrown into the mix from what other towns did, and all issues are up for discussion.

L. Potter-Saum (bus. owner) – speed cameras are a bad idea. Interested in the code violotions for homeowners/landlords – worry about retirees and those living on pensions who may not be able to afford to fix their homes. No issue with the 1% tax. Also, will be at the March Council meeting to support the second reading of the non-discrimination ordinance.

M. Allen – if HR accepts application, then a vote on the contents of the application? Can those not living in the Corporation or those who own a business vote?

Mayor – no, we have two more public hearings, and as of now our charter precludes that (regarding the vote).

M. Everhart – there should be a business advisory council to advise the town council.

Mayor – all of our meetings are open, please come to them.

J. Platz – (bus. owner) – maybe something could be written in to allow us to vote.

J. Murphy – asked about the budget, is it short?

Mayor – we have a lot of parades and events and our liability for town sponsored events is \$100K. We just spent \$41K on snow removal, the flowerbeds are \$4K/6 months, tree maintenance is \$12K/6 months – we use these funds to make Shepherdstown attractive. And using volunteers, doesn't work so well. The town makes every effort to not spend any extra money and to save every penny. Recently, an African-American church asked for a donation and we gave it. We are also helping them apply for a 501©3 status, and will help them get grants for future needs. The Town Council does not spend money frivolously.

D. Rosen – we are always looking for more non-revenue making ideas – please email us in the next few days.

K. Motivans – we were given instructions to come up with creative ideas, like the brunch rule, marketing and tourism, blighted buildings so the town looks good, and we asked the police what challenges they faced.

K. Stegal (new resident) – believes the cameras are a bad idea – feels like being watched. What is the goal of the code violations with HR?

Mayor – we will be able to issue a citation onsite, and is really more for dilapidated buildings. We can do some of that now, and we do and will continue to work with the homeowner before a citation is written.

D. Crawford (outside of town) – why do cops need an SUV?

Mayor – repair costs are quite high on crown vics, and they around better.

M. Allen – is the ABC part of the application revenue or safety seeking?

Chief King – it is more safety related. A good example is serving alcohol without a license, or reports of underage patrons being served. Some think that ABC is on call, but they are not. It can easily take 2-3 days for them to respond here. There some issues that the Shepherdstown Police Department can't enforce, like closing times. We are not looking to make a "sting" ..(was interrupted).

C. Asam – (outside of town/owner Bavarian Inn) – have an interesting layout at the Inn, 42 rooms are in town limits, and 30+ rooms plus the restaurant are not in town limits. The 1% sales tax is not a big deal as half of the rooms are affected. Feels like the bars should be kept open from to 3am. If the state doesn't pass the brunch rule, then he'd be open to discussion regarding annexation into town, as HR would allow the brunch rule.

G. Moody (outside of town/owner the Meck) – had spoken with L. Robertson, and is and isn't ok with the 2am last call. He's ok as long as it's county wide, otherwise then no. he has no issue with cameras if they are used to catch thieves, etc. Can HR be applied to SU not being allowed to blast for future construction?

Mayor – we have cameras on the street now to help catch people stealing. A good question about the blasting, not sure.

C. Delligatti – to address M. Everharts comment on the study he cited. Some towns also have B&O plus a sales tax, so that's is figured in. It's why we don't have historical data to refer to. Creating a new plan here will set us back as our deadline is April, but it can be amended.

M. Everhart – how much does the state look at proposed legislation? And how is the Home Rule Board made up?

C. Delligatti – the criteria is on the website. It wants to see how well thought out the ideas are, how creative the application is. We submit a proposal, there are 5 members. As of this date, no proposed ordinances have been denied.

M. Everhart – it shouldn't just be the members of the town council but town's people as well to have a say.

Mayor – the town council are all residents. The application is time sensitive, please have new ideas in to us by Monday.

T. Cotgreave – understand the time frame but shouldn't do it quickly.

Mayor – again, the application deadline is early April, then we can vet these issues.

C. Delligatti – Home Rule has been on the agenda several times already.

K. Motivans – this application wasn't just thrown together, and nothing was tossed around quickly.

J. Platz – it seems like many business owners were not informed.

L. Potter-Saum – how are the slots determined for HR?

C. Delligatti – the legislators set it up that way. There are 3 slots left for towns the size of Shepherdstown – before our size did not qualify to apply, now it's opened up. The criteria is on the website.

D. Tucker – can we preclude SU students from parking on German Street?  
Chief – it would be almost impossible to tell which cars belong to students.  
C. Delligatti – we are looking at possible crosswalks, and traffic flow. It's possible we won't have to ask the state for permission to close the streets for events, but not sure yet.

Kiera ? (town) – thanks to all of the business owners, and please keep in mind the younger people in town. She has miburg.com that covers events in the surrounding area.

A. Blessing (outside of town) – several have home rule, did they also include the ABC provision?

Catie Delligatti – yes, Martinsburg has included it for their police force along with a closing time of 2am.\

Mayor – please have any suggestions by Monday. Can email them.

**Mayor - if there are no objections, the meeting is adjourned at 7:55pm.  
No objections made.**

Draft Minutes respectfully submitted by L. Robertson, Recorder for the Corporation of Shepherdstown.

**Shepherdstown Town Council Meeting Minutes**  
**Tuesday March 8, 2016**  
**6:30 p.m. – Community Club**  
**German Street, Shepherdstown**  
**DRAFT**

**Present:** Jim Auxer (Mayor), Lori Robertson (Recorder), Bane Schill, Karene Motivans, Wanda Grantham Smith, and David Rosen.

**Absent:** Jim Ford

**Staff:** Frank Welch, Amy Boyd, and Chief Mike King.

**Visitors:** Chris Stroeck, Alexander Tykolinsky, Catie Delligatti, Inge Ledden, Marianne Davis, Robert Mitchel, Christie Ence, Mark Everhart, David Manthos, Matthew Pennington, Carolyn Litwack, Louise Cox, Pang Tubhirun, Sue Collins, Lillian Potter-Saum, Elizabeth Wheeler, Carlos Niederhauser, Matthew Birnbaum, Peggy McKowen, Eleanor Finn, Sue Kennedy, Nancy McKeithen, Paul Welch, Wendy Maddox, Tom Connelly, Zenia Kuzma, Christian Asam, Carol Asam, Erwin Asam, Richard Balliet, Sarah Smith, Dow Benedict.

**Agenda Items 1 and 2-Call to order/approval of minutes (vote required):**

Call to order by Mayor Auxer at 6:32 pm.

**K. Motivans - If there are no objections the minutes of February 9, 2016 are approved. None noted.**

**D. Rosen – if there are no objections the minutes of February 23, 2016 are approved. None noted.**

**Agenda Item 3 and 4 – Public Comment Period/Visitors:**

The Mayor explained the process of the meeting tonight, the Council meeting first, then Home Rule. He stated that after a few initial speakers those who have signed up to speak will have 3 minutes to do so with the Town Clerk manning the timer. Once everyone has spoken, the Town Council will deliberate without interruption and will take into account what

everyone has said. The First Reading of the Home Rule Application is March 15, with the Second Reading March 22, 2016. See the end of the minutes for the Home Rule discussion--

**Public Comment Period:**

Home Rule will follow the regular Council Agenda with comments noted as such.

Visitor's comments, if any, are logged in under the specific agenda items.

Visitor's Center Report – M. Davis gave an update for the Visitor's Center and introduced M. Birnbaum who spoke to the bike ride. The Mayor noted that there were several complaints from last years ride regarding 3 & 4 riders riding abreast, and riders traveling through the Farmer's Market.

**Agenda Item 5 – Public Hearings:**

- a. Second Reading of an Ordinance to Enact a New Chapter 10, Title 2 of the Code of Shepherdstown, to Provide for Equal Opportunity in the Areas of Employment, Public Accommodations and the Sale, Lease, Rental and Financing of Housing Accommodations without Regard to Race, Religion, Color, National Origin, Ancestry, Sex, Age, Blindness, Handicap, or Sexual Orientation and Gender Identity.

L. Robertson – thanked C. Stroeck for his work on the ordinance.

**L. Robertson – if there are no objections, move to approve the Second Reading of an Ordinance to Enact a New Chapter 10, Title 2 of the Code of Shepherdstown, to Provide for Equal Opportunity in the Areas of Employment, Public Accommodations and the Sale, Lease, Rental and Financing of Housing Accommodations without Regard to Race, Religion, Color, National Origin, Ancestry, Sex, Age, Blindness, Handicap, or Sexual Orientation and Gender Identity. No objections noted.**

**Agenda Item 6 – Unfinished Business:**

- A. Home Rule Program Draft Application – status-public hearing  
See the end of the minutes for the Home Rule discussion--



Mayor -- described Home Rule to those in attendance and what the application says, and its deadline.

**Agenda Item 7 – New Business:**

A. Event Request:

1. Dog Fest - May 14 & 15, 2016

M. Davis - stated that they are considering at their own expense, adding security officers so the vendors can keep their booths up between German Street and High Street overnight, keeping the alley open. They have talked to the church, and will provide a volunteer to free up parking on High Street for the church parking.

**D. Rosen – if there are no objections, move to approve Dog Fest. No objections noted.**

2. Garden Fest - May 21 & 22, 2016

P. McKowen- stated that she has nothing planned for overnight, and will speak to the church regarding the event. Need some parking spots from Queens Alley to High for parking large trucks.

K. Motivans – can the vendors be contained from German St. to Queens Alley?

Mayor – can use the police lot for the trucks to contain on the ½ block only to Queens Alley.

**K. Motivans– if there are no objections, move to approve Garden Fest. No objections noted.**

3. Shepherdstown May Day Celebration – April 30, 2016

W. Maddox stated that they would need to close German to Queen's Alley from 10am-4pm for the dancing, and German St from Church to Princess between noon to 1pm for the parade.

They are still working on McMurrin Lawn and were told to contact Hayden at the University.

**L. Robertson – if there are no objections, move to approve the May Day Celebration. No objections noted.**

4. Shepherdstown Farm to Fork – June 12, 2016

I. Ledden – will need trash and recycling bins, looking at one long table from the back of the Library to New St. if enough participants. Road closed from German St. to New St. Rain plans

are to move inside of the Community Club. Insurance is forthcoming.

**K. Motivans– if there are no objections, move to approve Shepherdstown Farm to Fork. No objections noted.**

5. Shepherdstown Day Care – Run by the River- no vote-info only  
No road closures as all along the river, beginning and ending at the Day Care.

Z. Kuzma requested that all events pick up the trash associated with their event.

#### **Agenda Item 8– Mayor’s Report:**

None

#### **Agenda Item 9 – Reports of Committees:**

##### **A. Finance Committee:**

1. Meeting minutes of March 4, 2016 not available.
2. Finance Reporting:

a. Financial statements as of January 31, 2016

Finance Committee Recommendations:

a. General Fund & Coal Severance Levy Budget 7/1/16-6/30/17 (with estimated Levy calculation)

**B. Schill – if there are no objections, move to approve the General Fund & Coal Severance Levy Budget 7/1/16-6/30/17. No objections noted.**

b. 2015-2016 General Budget Revision #6

**B. Schill– if no objections, move to approve the 2015-2016 General Budget Revision #6. No objections noted.**

##### **B. Public Works Committee:**

- a. Meeting Minutes of February 10, 2016
- b. Recommendations:
  - a. Adoption of Storm water Ordinance

M. Pennington of the Eastern Planning & Development Council was present. He gave a description of the Storm Water ordinance, and its parameters as to when it would be applicable. Its purpose is to protect the current system, and to follow the Chesapeake Bay Standards. This is important for the drinking water and aquatic life. The ordinance has been adopted by other cities.

Mayor – it is incumbent for us to do these things, and Matt has helped us get a \$1500 grant to vet out the ordinance.

**D. Rosen – if there are no objections, move to recommend the Storm Water Ordinance for the First Reading. No Objections noted.**

**Agenda item 10 – Report of Commissions, Authority and Boards:**

**A. Water and Sanitary Board:**

1 – Meeting minutes of February 25, 2016

2 – Recommendations:

None

**B. Planning Commission:**

None

**Home Rule Discussion from Unfinished Business:**

Mayor – described Home Rule to those in attendance and what the application says, and its deadline.

Chief King introduced S. Smith from ABC to clarify and answer any questions, and then stated that ABC is a Regulatory Commission who makes sure establishments abide by what is in their application when applying for an ABC license. ABC, not the Shepherdstown Police Department (SPD), conducts “Stings”; the SPD is called in to make charges, as ABC cannot do that.

S. Smith - By law, ABC has to make compliance checks, and ABC welcome the help from the SPD. There is special training for police officers over the normal course of their duty. She has 222 bars to oversee.

L. Saum – this will allow the SPD to have authority to go in.

Chief – if he gets a call, his officers have a responsibility to respond to that call, and yes, to be able to go in.

M. Everhart – define what SPD will do and the term “sting” should be removed.

Everyone agreed.

Chief – conduct investigations.

The Mayor and Catie again described what the process of the meeting tonight. He stated that after a few initial speakers those who have signed up to speak will have 3 minutes to do so with the Town Clerk manning the timer. Once everyone has spoken, the Town Council will deliberate without interruption and will take into account what everyone has said.

P. Welch – resident – cited the section regarding the B&O tax replacing the sales tax and asked what the current revenue is on the utility portion.

Mayor – approx. \$80K

Catie – stated she tried to get a hard number for what the 1% would mean to the town, but there is no data, as we don't have a current retail B&O tax to compare it to. The Mayor stated that in Bolivar in two months they generated upwards of \$8K with the 1%.

David Rosen – the utility B&O is being reduced from 4% to 3.75%.

P. Welch – also, how does the general public keep informed, it seems like the town is trying to hide what its doing. How do you get the info out for a more democratic process?

Mayor – maybe you can help us. We are already using notices in the papers, and online announcements of various kinds. The Town Clerk posted the agenda last week.

M. Everhart – the link on the website is broken.

Z. Kuzma – the agenda is not there.

D. Rosen – pulled up the website and could find the information during the discussion.

R. Mitchell – resident – will donate time for a survey and wants to become more involved.

Chris Stroeck – resident – thanked the Council for these sessions, as they are helpful to everyone. He has read the whole application and feels like it could be a good thing if executed properly. Remember, each piece of the application has to be heard again (put forth to the community). He feels like the communication could have been

better, as some items have been blown out of proportion. If anyone has questions, reach out to the council members, as they are available before making assumptions. The revenue generating options are good, the brunch bill and the 1% sales tax, as the town has to continue operating. The suggested closing time change from 3am to 2am is problematic as those wanting to drink will drive to other bars. With the police having ABC authority, it could be a slippery slope, if caution isn't used.

L. Cox – resident – has concerns about still closing at 3am, prefers a 1am closing – everyone should have their drinking done by then, and can't see families out at 3am.

Carlos Niederhauser – resident – mostly good items in the application-is concerned about the liens on properties as unpaid water bills cannot be held responsible to the landlord. For the communication, maybe have people subscribe to an email announcement. Let people know what's being built around them.

David Rosen – confused about the water component.

Carlos – worried that the landlord will be held responsible for the tenant not paying.

M. Everhart –resident - had a good chat with the Chief. Worried about the 1-2am closing times for the bars, as people will drive to other bars. Would like to see the word “sting” removed for the language. The 1% tax, there should be an economic impact study done to outline the revenue and how it's to be spent. Other applications are specific on how it's to be spent – open and transparent. Also, if the application is accepted, how locked in is the town to follow through on each item?

Catie – the town is not locked into a follow through – it can be amended. The Home Rule Board prefers that an application not be specific on how the money, added revenue, will be spent, so the applying body doesn't have to go back and explain why is not spending the money a certain way. Do not pledge it specifically.

Dow Benedict – resident – supports the Home Rule application, the town needs revenue, and do not lock in where the money goes. The town needs to be free to spend it where it's needed the most. The

3am last call is fine as long as the police have the ability to enforce the closing time. The brunch bill is a great idea.

Aaron Blessing – resident – likes the 3am time as many servers get off work late and go out for a nightcap.

Ad Booth – resident - for visitors, the speed cameras are a bad idea. Nothing worse then coming to a place then 2 weeks later you get a notice of a speeding violation, very unwelcoming. Keep Shepherdstown charming.

Town Council Deliberation –

Mayor went through each item with the Council agreeing on the brunch bill, marketing/tourism, 1% sales tax, Liens, and Delinquent Property taxes. The photo cameras – K. Motivans to help reduce speeds they do help, as there are more and more distracted drivers and pedestrians using cell phones. The overwhelming response was a no to speed cameras. Do want to be able to add crosswalks specifically from JSB to the Dance Studio on Washington St.

ABC – bar closing –

As a compromise to keeping them open until 3am allow the SPD to enforce the closing times. B. Schill is concerned about drunk drivers in general. L. Robertson - if last call is 3am, then the bars have to be cleared out by 3:30 or 4am depending on what day it is per ABC regulations. Everyone agreed. K. Motivans – what about the issue of Maryland patrons coming here after the Maryland bars close at 1am?

Chief – not aware of this currently.

S. Kennedy – who is responsible if the bartenders continue to serve – the bartenders/owners?

S. Smith – the bar is liable.

D. Rosen – we need to allow our officers to keep us safer.

K. Motivans – ok with times

W. Smith – ok with the 3am time. The police need to be able to go in and respond to a call, and to check for underage drinking.

Citations for external nuisances like tall grass, trash build-up, etc. – everyone agreed.

Liens for eyesore/dilapidated properties – everyone agreed.



Ability to enter into contracts with other jurisdictions to share costs like bonds – everyone agreed.

Fees for court -\$3 to \$5 to help recoup court costs – everyone agreed.

**B. Schill – if there are no objections, move to recommend the Home Rule Application for the First Reading on March 15, subject to revisions as deliberated on tonight, March 8, 2016. No objections made.**

**Mayor - if there are no objections, the meeting is adjourned at 8:17 p.m. No objections made.**

Draft Minutes respectfully submitted by L. Robertson, Recorder for the Corporation of Shepherdstown.



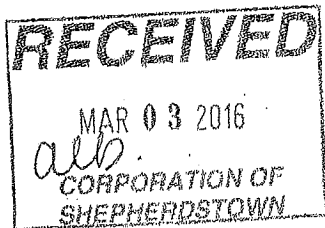
PUBLICATION MANDATE VERIFICATION

**NOTICE OF  
PUBLIC HEARING  
CORPORATION OF  
SHEPHERDSTOWN  
PROPOSED HOME  
RULE PLAN**

A public hearing will be held on the Corporation of Shepherdstown's proposed Home Rule Plan pursuant to West Virginia Code § 1-5a(g) at a special meeting of the Town Council of the Corporation of Shepherdstown to be held on Tuesday the 23rd day of February, 2016, at 6:30 p.m., in the Council Chambers at the Shepherdstown Town Hall, 104 North King Street, Shepherdstown, West Virginia, and at such hearing all objections and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper concerning the Corporation of Shepherdstown's Home Rule Plan and any subsequent application to the West Virginia Municipal Home Rule Board.

A copy of the Corporation of Shepherdstown's Municipal Home Rule Plan is available for review during business hours at the Shepherdstown Town Hall, 104 North King Street, Shepherdstown, West Virginia.

Dated January 15, 2016  
Lod Robertson, Recorder  
1-21-2016 (10)



**Certificate of Publication**

This is to certify the annexed advertisement

**CORP OF SHEPHERDSTOWN  
NOTICE**

appeared for 2 consecutive days/weeks  
in the Shepherdstown Chronicle, a newspaper  
published in the City of Shepherdstown, WV  
in its issue beginning:

1-21-16

and ending:

1-28-16

**The Shepherdstown  
Chronicle**

**P.O. Box 2088**

**Shepherdstown, WV 25443-2088**

Fee \$ 49.08

THE STATE OF WEST VIRGINIA  
COUNTY OF JEFFERSON

The foregoing instrument was acknowledged before me

this 9 Feb 2016 by

*Samuel Hill*

My commission expires Apr 29 2018

Notary Public *Carol Bush*



OFFICIAL SEAL  
STATE OF WEST VIRGINIA  
NOTARY PUBLIC  
Carol Bush  
23 Armstrong Way  
Martinsburg, WV 25403

My Commission Expires April 29, 2018



# Corporation of Shepherdstown

## ORDINANCE AUTHORIZING SUBMISSION OF PLAN

ORDINANCE 2016 - 01

AN ORDINANCE AUTHORIZING THE MAYOR TO SUBMIT A HOME RULE PROPOSAL TO THE MUNICIPAL HOME RULE BOARD IN ACCORDANCE WITH WEST VIRGINIA CODE §8-1-5A

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

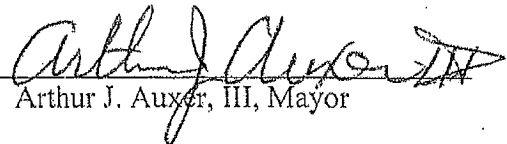
The Mayor is hereby authorized to submit the Home Rule Application to the Municipal Home Rule Board in accordance with West Virginia Code §8-1-5a in order for the Corporation of Shepherdstown to be included in Phase III of the West Virginia Home Rule Pilot Program. A copy of said proposal is attached hereto.

Be it further Ordained by the Town Council of the Corporation of Shepherdstown that this Ordinance shall take effect upon the date of adoption.

Introduced: March 15, 2016

Adopted: March 22, 2016

THE CORPORATION OF SHEPHERDSTOWN, WEST VIRGINIA, a municipal corporation

By:   
Arthur J. Auxer, III, Mayor

Attest:

  
Lori Robertson, City Recorder

CERTIFICATION

The undersigned Recorder of the Corporation of Shepherdstown, West Virginia, does hereby certify that the attached is a true, accurate and sealed copy of the Ordinance enacted by the Town Council of the Corporation of Shepherdstown, West Virginia on March 22, 2016, authorizing submission of a Home Rule proposal to the Municipal Home Rule Board in accordance with West Virginia Code § 8-1-5a.

Given under my hand this 22 day of March, 2016.

  
\_\_\_\_\_  
Lon Robertson, Recorder





# Corporation of Shepherdstown

## SALES TAX/B&O TAX ILLUSTRATION

<b>Corporation of Shepherdstown</b>				
<b>Business &amp; Occupation Tax/Sales Tax Projections</b>				
Current rate:	4%		<b>Revenue Projection with Rate Reduction of 5%</b>	
<u>2013 B&amp;O tax collected</u>	<u>Total</u>		Average annual B&O tax collection (for 2013 and 2014):	\$77,657.45
03/31/2013	\$24,283.81		Average annual utility sales (B&O revenue divided by 4%):	\$1,941,436.13
06/30/2013	\$17,053.35		Projected B&O Rate:	3.80%
09/30/2013	\$16,667.84		Projected B&O tax collection with reduced rate:	\$73,774.57
12/31/2013	\$18,748.18	\$76,753.18	Projected annual reduction in B&O revenue:	<b>-\$3,882.87</b>
<u>2014 B&amp;O tax collected</u>				
03/31/2014	\$26,253.78		<b>Necessary Gross Sales to Make Up for B&amp;O Revenue Reduction:</b>	
06/30/2014	\$17,181.33			
09/30/2014	\$17,029.86		Projected sales tax rate:	1%
12/31/2014	\$18,096.74	\$78,561.71	Necessary annual gross sales to generate \$3,882.87 net to the Town*:	<b>\$408,723.39</b>
*This amount takes into account the 5% administrative fee that will be captured by the State Tax Department.				
<i>Note: The Town currently imposes a B&amp;O tax only on utilities.</i>				
<i>To implement a 1% sales tax as part of Home Rule, the Town must reduce the B&amp;O tax rate imposed.</i>				
<i>Once reduced, the B&amp;O rate may not be raised without eliminating the sales tax.</i>				



## CORPORATION OF SHEPHERDSTOWN

104 NORTH KING STREET  
P.O. BOX 248  
SHEPHERDSTOWN, WEST VIRGINIA 25443-0248  
TEL: (304)876-2312  
FAX: (304) 876-1473

December 29, 2015

Honorable Mark W. Matkovich  
West Virginia State Tax Commissioner  
The Revenue Center  
1001 Lee St. E.  
Charleston, West Virginia 25301

Dear Commissioner Matkovich:

Please provide the amount of consumer sales tax that was remitted in tax year 2014 that is attributable to sales made within the corporate limits of Shepherdstown, or, in the alternative, the amount of gross sales that were subject to consumer sales tax and were reported as having been made within the corporate limits of Shepherdstown in tax year 2014. If you have any questions, please contact our assisting legal counsel Catherine (Catie) Wilkes Delligatti at (304) 264-4203.

Very truly yours,

Arthur J. Auxer, III, Mayor  
Corporation of Shepherdstown, WV

cc: Matthew Irby, Esq., Director, Tax Account Administration Division



# Corporation of Shepherdstown

ATTORNEY OPINION (APPLICATION COMPLIES WITH STATUTORY REQUIREMENTS)

600 Quarrier Street  
Charleston, West Virginia 25301

7000 Hampton Center  
Morgantown, West Virginia 26505

501 Avery Street  
Parkersburg, West Virginia 26101



101 South Queen Street  
Martinsburg, West Virginia 25401

Post Office Drawer 1419  
Martinsburg, West Virginia 25402-1419  
(304) 263-0836

[www.bowlesrice.com](http://www.bowlesrice.com)

Southpointe Town Center  
1800 Main Street, Suite 200  
Canonsburg, Pennsylvania 15317

1217 Chapline Street  
Wheeling, West Virginia 26003

480 West Jubal Early Drive, Suite 130  
Winchester, Virginia 22601

Charles F. Printz, Jr.  
Telephone — (304) 264-4222  
Facsimile — (304) 267-3822

March 23, 2016

E-Mail Address:  
[cprintz@bowlesrice.com](mailto:cprintz@bowlesrice.com)

West Virginia Municipal Home Rule Board  
West Virginia Home Rule Pilot Program  
State Capitol Complex, Building 6, Room 553  
Charleston, West Virginia 25305

Re: Application of the Corporation of Shepherdstown  
West Virginia Municipal Home Rule Pilot Program Phase III

Dear Ladies and Gentlemen:

We have acted as counsel to the Corporation of Shepherdstown in connection with its application to the West Virginia Municipal Home Rule Pilot Program Phase III. For purposes of the opinions contained in this letter, we have examined West Virginia Code § 8-1-5a, the Municipal Home Rule Pilot Program Phase III Application Guidelines, as promulgated in June 2015, and the Municipal Home Rule Pilot Program Phase III Application of the Corporation of Shepherdstown (the "Application"). As to any facts relevant to our opinion which we did not independently establish, we have relied upon factual representations contained within the Application and documentation submitted contemporaneously therewith.

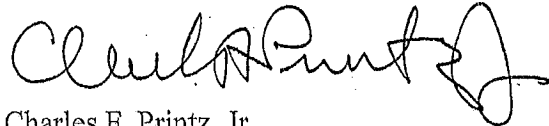
We find that the Application does not include proposals that will make changes to ordinances, acts, resolutions, rules, and regulations contrary to environmental laws, bidding on government construction and other contracts, the Freedom of Information Act, the Open Governmental Proceedings Act, wages for construction of public improvements, the provisions of West Virginia Code § 8-1-5a, the provisions of West Virginia Code § 8-12-5a, and the Corporation of Shepherdstown's written plan. Further, we find that the Application does not propose to pass any ordinance, act, resolution, rule, or regulation pertaining to the Constitution of the United States, the Constitution of the State of West Virginia, Federal law or crimes and punishment, Chapters 60A, 61, and 62 of the West Virginia Code or other state crimes and punishment, pensions or retirement plans, annexation, taxation, tax increment financing, extraction of natural resources, persons or property outside the boundaries of the municipality, marriage and divorce laws, or an occupation tax, fee, or assessment payable by a nonresident of a municipality, except to the extent that the Application proposes a municipal sales tax of up to one percent in connection with the reduction of the Corporation of Shepherdstown's Business and Occupation Tax, as permitted by West Virginia Code § 8-1-5a(i)(14).

March 23, 2016  
West Virginia Municipal Home Rule Board  
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Finally, as evidenced by the documentation enclosed with the Application, the Corporation of Shepherdstown made available a copy of the Application for public viewing and published thirty days' advance notice of a public hearing on the Application, conducted such a public hearing, and adopted an ordinance authorizing the Corporation of Shepherdstown to submit the Application. Further, as evidenced by the documentation enclosed with the Application, the Corporation of Shepherdstown is current in payment of all state fees.

Based upon the foregoing, we opine that the Corporation of Shepherdstown's Application for participation in the West Virginia Municipal Home Rule Pilot Program Phase III does not violate the provisions of West Virginia Code § 8-1-5a. This opinion is solely for the benefit of the Municipal Home Rule Board in connection with the Application of the Corporation of Shepherdstown to the WV Municipal Home Rule Pilot Program Phase III, and without our written consent, this opinion letter may not be used or relied upon by any other person for any purposes whatsoever.

Very truly yours,



Charles F. Printz, Jr.

cc: Honorable Arthur E. Auxer III, Mayor



# Corporation of Shepherdstown

STATE OF WEST VIRGINIA FEES STATEMENT (NONE OUTSTANDING)



AFFIDAVIT

STATE OF WEST VIRGINIA,

COUNTY OF JEFFERSON, to-wit:

The Affiant, after being duly sworn, swears and affirms as follows:

1. I, Arthur J. Auer III am the Mayor for the Corporation of Shepherdstown.

2. As Mayor, I am familiar with all of the financial affairs for the Corporation of Shepherdstown.

3. I certify that the Corporation of Shepherdstown is not delinquent in, nor does it have any outstanding payment due to the State of West Virginia.

Arthur J. Auer III

Taken, subscribed and sworn to before me this 22 day of March, 2016.

My commission expires: December 15, 2019

Amy L. Boyd  
Notary Public

