



Frank A. Mullens Jr.
Mayor

City of South Charleston

P.O. Box 8597
South Charleston, WV 25303
Telephone: 304-744-5301
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www.cityofsouthcharleston.com

November 5, 2015

Municipal Home Rule Board
c/o Debbie Browning
West Virginia Development Office
State Capitol Complex, Building 6, Room 553
Charleston, West Virginia 25305-0311

Re: First Proposed Written Plan Amendment by the City of South Charleston

Dear Board Members,

Enclosed please find the following documents for the Board's immediate consideration:

- The first proposed plan amendment to the City of South Charleston's Municipal Home Rule Written Plan and Application of 2014. This first proposed amendment seeks permission to take full advantage of the flexibility concerning taxes under Home Rule as permitted by the West Virginia Legislature.
- A copy of the Ordinance authorizing submission of this first proposed amendment to the written plan to the Municipal Home Rule Board.
- The legal advertising invoice with affidavit of publication concerning publication of the public hearing related to the first proposed amendment to the written plan.
- An affidavit certifying that a copy of proposed amendment was available for public inspection at my office at City Hall at least thirty days prior to the public hearing.
- An affidavit certifying that a public hearing was held in connection with the proposed plan amendment but no comments were received. As such, no comments offered during the public hearing, either in audio or written form, are attached.
- A letter from the City Attorney certifying that the proposed amendment complies with W. Va. Code § 8-1-5a.

Thank you for your time and consideration of the first proposed plan amendment to the City of South Charleston's Municipal Home Rule Written Plan and Application. If I may be of additional assistance, please do not hesitate to contact me.

Sincerely,

Frank A. Mullens, Jr.
Mayor of the City of South Charleston

City of South Charleston West Virginia



Municipal Home Rule Written Plan Amendment 2015



**First Proposed Amendment to the Written Plan of the City of South Charleston
2015**

I. Introduction

The City of South Charleston was accepted into the Municipal Home Rule Pilot Program on October 6, 2014 pursuant to W. Va. Code § 8-1-5a (2014). The City of South Charleston's Municipal Home Rule Written Plan and Application of 2014 included four issues: (1) Creation of a one-half percent sales tax and reduction of business and occupation (B&O) and utility taxes; (2) Expansion of the ability to issue immediate citations; (3) Authorizing the City to transfer certain property without public auction; and (4) Expanding the City's administrative authority concerning variances and special permits.

Pursuant to W. Va. Code § 8-1-5a(k) (2015), a municipality participating in the Municipal Home Rule Pilot Program may amend its written plan at any time. Since participating in the program, the City of South Charleston has adopted two Home Rule ordinances, one concerning immediate citations and another concerning property transfers, and has continued to study the other two issues, most recently the issue of taxation. After such study and deliberation, the City of South Charleston now wishes to amend the first issue of its 2014 written plan related to taxes in order to permit the City the broadest flexibility permissible under Home Rule.

The Municipal Home Rule Board has provided guidance for municipalities proposing a plan amendment. Such guidance states the following procedures for an amendment of a written plan:

1. At least 30 days' notice of a public hearing related to the proposed amendment to the written plan by a Class II legal advertisement;
2. Availability of a copy of the proposed amendment to the written plan for public inspection at least 30 days prior to holding the public hearing related to the proposed amendment to the written plan;
3. A public hearing related to the proposed amendment to the written plan;
4. Adoption of an ordinance authorizing the submission of the proposed amendment to the written plan to the Municipal Home Rule Board after the public hearing;
5. Submission of the proposed amendment to the written plan to the Municipal Home Rule Board, including a copy of the proposed amendment to the written plan, the adopted ordinance authorizing the submission of the proposed amendment, evidence of compliance with the notice and public hearing requirements, any audio or written comments offered during the public hearing and a letter from an attorney licensed to practice law in West Virginia certifying that the proposed amendment of the written plan complies with W. Va. Code § 8-1-5a; and
6. Approval or rejection of the proposed amendment by the Municipal Home Rule Board.

The City of South Charleston is hereby seeking permission from the Municipal Home Rule Board to amend the first issue of its 2014 written plan related to taxes. The City of South Charleston certifies that it will have complied with the first five requirement for the amendment

of the written plan prior to the City's submittal of this amendment request to the Municipal Home Rule Board for consideration.

II. Specific Laws Applicable.

West Virginia Code § 8-13C-1 et seq.

III. Problem Created by Applicable Laws

As previously noted in City of South Charleston's Municipal Home Rule Written Plan and Application of 2014, as well as the written plans of several other West Virginia municipalities, municipalities in West Virginia have limited means to obtain revenue to provide necessary services to their residents. The Municipal Home Rule Pilot Program, W. Va. Code § 8-1-5a, currently gives participating municipalities the authority to enact a municipal sales tax of up to one percent if it reduces or eliminates its municipal business and occupation tax. Other than this authority, municipalities do not have the authority to levy a consumer sales tax except in limited circumstances. *See* W. Va. Code §§ 8-13C-4 and 13C-9.

The current lack of flexibility regarding the imposition of sales and use taxes is problematic. It focuses the generation of a municipality's income on taxes that affect the municipality's residents and businesses. Examples of such taxes include utility taxes per W. Va. Code § 8-13-5a and business and occupation taxes per W. Va. Code § 8-13-5. This focus bestows benefits upon visitors of a municipality for which its residents have to pay. City residents are paying for all services, such as police and garbage collection, which also benefit visitors who shop in South Charleston. Without a sales tax, there is no efficient method for a city to obtain reimbursement from visitors.

IV. Proposed Solution

In October 2014, the Municipal Home Rule Board granted the City of South Charleston permission to proceed with a specific tax plan, the first of the four issues contained in this City's Home Rule plan. This plan called for reducing the 0.50% B&O tax rate on retailers to 0.45%, reducing the 1.00% B&O tax rate on services to 0.95%, reducing the 2.00% utility tax to 1.00%, and establishing a 0.50% sales tax. This plan does not, however, take advantage of all permissible options concerning the establishment of a sales tax under Home Rule as permitted by the West Virginia Legislature. West Virginia Code § 8-1-5a currently permits each participating municipality to enact a municipal sales tax up to one percent if it reduces or eliminates its municipal B&O tax.

After additional examination of the tax structure, revenue estimates and needs of the City of South Charleston, the City would like to take advantage of the maximum flexibility concerning taxes provided in the Municipal Home Rule Pilot Program. Consequently, the City of South Charleston is asking the Municipal Home Rule Board to permit this amendment of the City of South Charleston's Municipal Home Rule Written Plan and Application of 2014 to permit the City the privilege of enacting sales and use taxes to the broadest extent permissible per W. Va. Code § 8-1-5a, without the restrictions imposed in other sections of article one, chapter eight of the West Virginia Code.

The proposed restructuring of taxes, including the enactment of a sales and use taxes and reduction of municipal B&O tax, would assist the City of South Charleston in resolving existing inequities. It would permit the City to reduce the tax burden on South Charleston residents and to have such burden shared by visitors to the City.

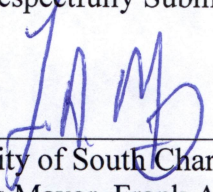
The Municipal Home Rule Pilot Program, W. Va. Code § 8-1-5a (2015), currently does not require, as was required by W. Va. Code § 8-1-5a(i) (2014), that specific ordinances also be approved by the Municipal Home Rule Board. Nevertheless, information concerning the tax modifications being considered by the City may assist the Board in making its determination on this plan amendment. The tax modifications currently anticipated are as follows:

- Reducing the 4.00% B&O tax rate on water companies by 1.00%, to 3.00%;
- Reducing the 3.00% B&O tax rate on natural gas companies by 1.00%, to 2.00%;
- Reducing the 4.00% B&O tax rate on electric light companies by 1.00%, to 3.00%;
- Reducing the 4.00% B&O tax rate on power companies by 1.00%, to 3.00%;
- Eliminating the 0.50% B&O tax rate on places of amusement; and
- Establishing a 1.00% municipal sales and use tax.

Attached hereto, as **Exhibit A**, is a spreadsheet containing financial estimates and confirming feasibility of the City of South Charleston anticipated tax modifications. The B&O taxes the City is planning to reduce will directly benefit South Charleston's residents, given that such taxes are passed directly on to them by utility companies. Estimates demonstrate that such tax restructuring will result in additional income to the City. Additional income is greatly needed to improve the City's infrastructure, comply with statutory obligations, and alleviate underfunded pensions.

As detailed above, this first proposed amendment to the Municipal Home Rule Written Plan of the City of South Charleston seeks permission to take full advantage of the flexibility concerning taxes under Home Rule as permitted by the West Virginia Legislature. The City would like to take advantage of the maximum flexibility concerning taxes permitted under the Municipal Home Rule Pilot Program. The City of South Charleston appreciates the Municipal Home Rule Board's consideration of this first plan amendment.

Respectfully Submitted,



City of South Charleston, by and through
its Mayor, Frank A. Mullens, Jr.

Date: 11/2/15

<u>TAX CODE</u>	<u>GROSS EARNINGS 2012</u>	<u>B&O RATE</u>	<u>B&O TAX PAID</u>	<u>New B&O Rate</u>	<u>B&O Tax Est.</u>	<u>Conservative Earnings Est.</u>	<u>Sales Tax 1%</u>
T12 MANUFACTURED	\$ 664,528,319.35	0.30%	\$ 1,993,584.96	0.30%	\$ 1,993,584.96		
T13 RETAILERS	\$ 590,653,577.41	0.50%	\$ 2,953,267.89	0.50%	\$ 2,953,267.89	\$ 295,326,788.71	\$ 2,953,267.89
T14 WATER COMPANIES	\$ 6,144,779.75	4.00%	\$ 245,791.19	3.00%	\$ 184,343.39		
T15 CONTRACTING	\$ 70,427,156.70	2%	\$ 1,408,543.13	2.00%	\$ 1,408,543.13		
T16 AMUSEMENT	\$ 640,110.96	0.50%	\$ 3,200.55	0.00%	\$ -		
T17 SERVICE	\$ 266,109,633.97	1%	\$ 2,661,096.34	1.00%	\$ 2,661,096.34	\$ 133,054,816.99	\$ 1,330,548.17
T19 BANKING	\$ 13,382,613.53	1%	\$ 133,826.14	1.00%	\$ 133,826.14		
T23 WHOLESALERS	\$ 135,346,020.45	0.15%	\$ 203,019.03	0.15%	\$ 203,019.03		
T24 NATURAL GAS	\$ 4,070,296.88	3%	\$ 122,108.91	2.00%	\$ 81,405.94		
T44 DOMESTIC LIGHTING	\$ 10,350,974.67	4%	\$ 414,038.99	3.00%	\$ 310,529.24		
T64 ELECTRIC	\$ 15,740,191.57	4%	\$ 629,607.66	3.00%	\$ 472,205.75		
Total:	\$ 1,777,393,675.24		\$ 10,768,084.79		\$ 10,401,821.80		\$ 4,283,816.06

B&O Less Amusement

		<u>3% Tax Department</u>	<u>Total Revenue</u>	<u>Increase in Rev.</u>
Total W/ Red. Tax & 1% Sales Tax	\$ 14,685,637.86	\$ 128,514.48	\$ 14,557,123.38	\$ 3,789,038.59

B&O Tax Reduction \$ 366,262.98

Current B&O Revenue	\$ 10,768,084.79
Reduced B&O	\$ 10,401,821.80
Revenue From Sales Tax	\$ 4,283,816.06
Less 3% Tax Department Charge	(\$128,514.48)
Total Revenues from Changes	\$ 14,557,123.38

Current Revenue From B&O	\$10,768,084.79
Estimated with Sales Tax	\$14,557,123.38
Total Increase	\$3,789,038.59

EXHIBIT A

<u>TAX CODE</u>	<u>GROSS EARNINGS 2015</u>	<u>B&O RATE</u>	<u>B&O TAX PAID</u>	<u>New B&O Rate</u>	<u>B&O Tax Est.</u>	<u>Conservative Earnings Est.</u>	<u>Sales Tax 1%</u>
T12 MANUFACTURED	\$ 873,884,140.00	0.30%	\$ 2,621,652.42	0.30%	\$ 2,621,652.42		
T13 RETAILERS	\$ 650,700,414.00	0.50%	\$ 3,253,502.07	0.50%	\$ 3,253,502.07	\$ 325,350,207.00	\$ 3,253,502.07
T14 WATER COMPANIES	\$ 6,284,932.50	4.00%	\$ 251,397.30	3.00%	\$ 188,547.98		
T15 CONTRACTING	\$ 72,339,204.50	2%	\$ 1,446,784.09	2.00%	\$ 1,446,784.09		
T16 AMUSEMENT	\$ 505,370.00	0.50%	\$ 2,526.85	0.00%	\$ -		
T17 SERVICE	\$ 297,373,412.00	1%	\$ 2,973,734.12	1.00%	\$ 2,973,734.12	\$ 148,686,706.00	\$ 1,486,867.06
T19 BANKING	\$ 14,875,459.00	1%	\$ 148,754.59	1.00%	\$ 148,754.59		
T23 WHOLESALERS	\$ 123,901,500.00	0.15%	\$ 185,852.25	0.15%	\$ 185,852.25		
T24 NATURAL GAS	\$ 6,035,476.67	3%	\$ 181,064.30	2.00%	\$ 120,709.53		
T44 DOMESTIC LIGHTING	\$ 10,069,993.75	4%	\$ 402,799.75	3.00%	\$ 302,099.81		
T64 ELECTRIC	\$ 12,232,655.75	4%	\$ 489,306.23	3.00%	\$ 366,979.67		
Total:	\$ 2,068,202,558.17		\$ 11,957,373.97		\$ 11,608,616.53		\$ 4,740,369.13

B&O with Reductions \$ 11,608,616.53

Total W/ Red. Tax & 1% Sales Tax	\$ 16,348,985.66	<u>3% Tax Depart</u>	<u>Total Revenue</u>	<u>Increase in Rev.</u>
		\$ 142,211.07	\$ 16,206,774.59	\$ 4,249,400.62

B&O Tax Reduction \$ 348,757.44

Current B&O Revenue	\$ 11,957,373.97
Reduction In B&O	\$ (348,757.44)
Revenue From Sales Tax	\$ 4,740,369.13
Less 3% Tax Department	(\$142,211.07)
Total Revenues from Changes	<u>\$16,206,774.59</u>

Current Revenue From B&O	\$11,957,373.97
Estimated with Sales Tax	<u>\$16,206,774.59</u>
Total Increase	<u>\$4,249,400.62</u>

INTRODUCED BY:
Frank A. Mullens, Jr., Mayor

ORDINANCE NO:
2222

REFERRED TO:

APPROVED ON:
November 5, 2015

AN ORDINANCE AUTHORIZING THE SUBMISSION OF THE FIRST PROPOSED MUNICIPAL HOME RULE PLAN AMENDMENT TO THE MUNICIPAL HOME RULE BOARD

WHEREAS, the City of South Charleston was accepted into the Municipal Home Rule Pilot Program on October 6, 2014; and

WHEREAS, the City's current Home Rule plan takes only limited advantage of the tax opportunities available under Home Rule, calling for a reduction in utility and business and occupation taxes, as well as the establishment of a sales and use tax of one half of one percent; and

WHEREAS, the City would like to be able to take full advantage of the tax choices available under Home Rule, which requires an amendment to the City's current Home Rule plan, which in turn requires submission of the proposed amendment to the plan to the Municipal Home Rule Board for approval, which in turn requires this ordinance authorizing the City to submit its proposed amendment to the Municipal Home Rule Board for consideration; and

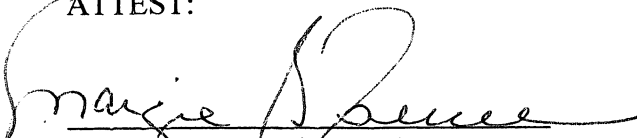
WHEREAS, such an amendment, if approved, would currently permit the imposition of a municipal sales and use tax at the rate of up to one percent, enable the reduction of various business and occupation taxes to benefit City residents, and create funds assisting to remedy the City's underfunded pensions, improving infrastructure to further economic development, and aiding the City to meet its statutory obligations, including as to pay increases;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SOUTH CHARLESTON, WEST VIRGINIA, THAT:

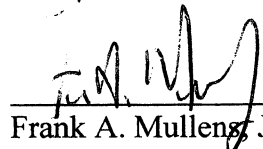
The City of South Charleston does hereby authorize the Mayor of the City of South Charleston to submit South Charleston's first proposed amendment to its Municipal Home Rule Written Plan to the Municipal Home Rule Board for approval. This first proposed amendment seeks permission to take full advantage of the flexibility concerning taxes under Home Rule, was subject to a public hearing on October 15, 2015, and was available for public inspection for at least thirty days prior to such hearing.

This ordinance shall take effect immediately upon passage.

ATTEST:



Margie Spence, City Clerk



Frank A. Mullens Jr., Mayor

This ordinance was prepared by Moore & Biser PLLC, City Attorney.



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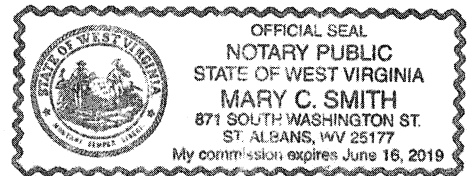
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			967031001			2.25	9.10	20.48	20.48
09/21	LEGR	GZ	9/14, 9/21	HOME RULE		1X0225			
			967031002			2.25	9.10	20.48	
			LEGAL DISCOUNT 25%					5.12-	15.36
									35.84

NOTICE IS HEREBY GIVEN that a public hearing on the City of South Charleston's first Municipal Home Rule Written Plan Amendment on the plan's first issue concerning taxation will take place during the regularly scheduled meeting of the South Charleston City Council on Thursday, October 15, 2015, beginning at 7:30 p.m. at the City Council Chamber, located at City Hall, 401 D Street, South Charleston, West Virginia. A copy of the written plan amendment, providing for the broadest tax flexibility possible under Home Rule for the City, is available for public inspection at the South Charleston Mayor's Office at City Hall during regular business hours. (609669)

INVOICE AMOUNT

FIDAVIT OF PUBLICATION

Mary C. Smith
_____ of _____



do solemnly swear that the legal notice of:
9/14, 9/21 HOME RULE AME

was duly published in said newspaper(s) at the stated price for the respective newspaper(s) and during the dates listed below:

09/14/15-09/21/15

Subscribed and sworn to before me this 25th day of September, 2015

Mary C. Smith
Notary Public of Kanawha County, West Virginia

AFFIDAVIT OF MELANIE SHILLING

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

Melanie Shilling, who being duly sworn, deposes and says as follows:

1. My name is Melanie Shilling, and I am over the age of 18 years old and have personal knowledge of the facts stated herein.
2. I have served at all times relevant herein as the Secretary to Frank A. Mullens, Jr., Mayor of the City of South Charleston, West Virginia.
3. The City of South Charleston's first proposed amendment to its Municipal Home Rule Written Plan concerning taxes was available for public inspection at the South Charleston Mayor's Office during regular business hours from September 14, 2015 through November 5, 2015.

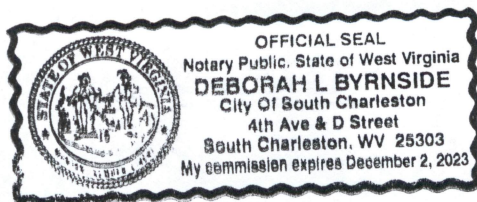
Further the affiant sayeth naught.

Melanie Shilling
Melanie Shilling

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA:

The foregoing was subscribed and sworn to before me on November 5, 2015.
My Commission expires: *December 2, 2023.*

Deborah L. Byrnside
Notary Public




AFFIDAVIT OF W. MICHAEL MOORE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

W. Michael Moore, who being duly sworn, deposes and says as follows:

1. My name is W. Michael Moore, and I am over the age of 18 years old and have personal knowledge of the facts stated herein.
2. I have served at all times relevant herein as the City Attorney for the City of South Charleston, West Virginia.
3. A public hearing on the City of South Charleston's first proposed amendment to its Municipal Home Rule Written Plan concerning taxes was held during the regular meeting of the City Council of the City of South Charleston on October 15, 2015, beginning at 7:30 p.m. prior to the first reading of the related ordinance entitled "AN ORDINANCE AUTHORIZING THE SUBMISSION OF THE FIRST PROPOSED MUNICIPAL HOME RULE PLAN AMENDMENT TO THE MUNICIPAL HOME RULE BOARD."
4. I attended this City Council meeting and public hearing on October 15, 2015.
5. No comments were made by the public during this public hearing.
6. The ordinance entitled "AN ORDINANCE AUTHORIZING THE SUBMISSION OF THE FIRST PROPOSED MUNICIPAL HOME RULE PLAN AMENDMENT TO THE MUNICIPAL HOME RULE BOARD" is on the South Charleston City Council agenda for second reading on November 5, 2015.

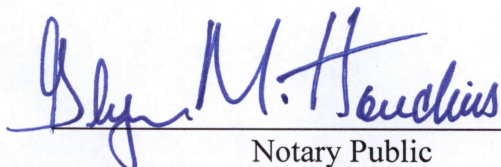
Further the affiant sayeth naught.



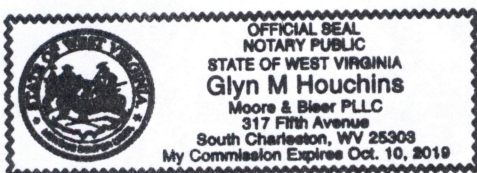
W. Michael Moore

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA:

The foregoing was subscribed and sworn to before me on November 5, 2015.
My Commission expires:



Notary Public





317 Fifth Avenue
South Charleston, WV 25303

T 304.414.2300

F 304.414.4506

www.moorebiserlaw.com

After-hours Ext. #101
mmoore@moorebiserlaw.com

November 5, 2015

Frank A. Mullens, Jr., Mayor
City Hall
401-D Street
South Charleston, WV 25303

Re: Legal Opinion – Home Rule Proposed Written Plan Amendment (First)

Dear Mayor Mullens:

As the City Attorney for the City of South Charleston, I have reviewed the first proposed amendment to the City of South Charleston's Municipal Home Rule Written Plan concerning taxes, an amendment that was the subject of a public hearing on October 15, 2015. Upon my review of the proposed amendment, it is my legal opinion as an attorney licensed to practice in West Virginia that it and the entire written plan do not violate the provisions of W. Va. Code § 8-1-5a.

Please let me know if I can be of further assistance in this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "W. Michael Moore", is written over a printed name.

W. Michael Moore

WMM/MC