

CITY OF WHEELING



CITY COUNTY BLDG., 1500 CHAPLINE STREET
WHEELING, WEST VIRGINIA 26003

September 7, 2016

Honorable Members of the Board
WV Home Rule Pilot Program
WV Department of Commerce
State Capitol Complex
Building 6, Room 525
Charleston, WV 25305-0311

RE: Municipal Home Rule Pilot Program Amendment

Dear Board Members:

The City of Wheeling respectfully herein submits its Amendment for consideration as an approved Plan participant in the West Virginia Municipal Home Rule Pilot Program. Enclosed please find the Amendment with attachments, as well as the requisite affidavits and documents evidencing that the procedural requirements of West Virginia Code § 8-1-5a et seq. have been met.

Thank you in advance of your consideration. Should you have any questions regarding th enclosed, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "RH", with a long horizontal flourish extending to the right.

Robert Herron
City Manager

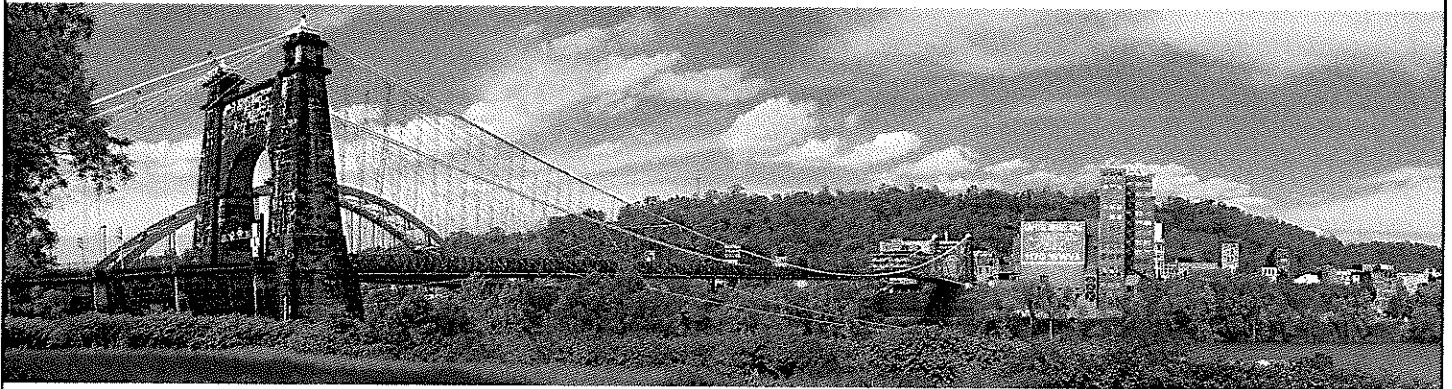
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Enclosure



CITY OF
Wheeling
WEST VIRGINIA

HOME RULE PLAN AMENDMENT



FOR PRESENTATION TO THE HOME RULE BOARD

OCTOBER 3, 2016

CITY OF WHEELING

HOME RULE PLAN AMENDMENT

INTRODUCTION

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

Under West Virginia Code § 8-1-5(a)(5), municipalities participating in the Municipal Home Rule Pilot Program may amend their written plans. For the reason set forth herein, Wheeling is now requesting that the Board authorize the following amendment to Wheeling’s approved plan.

SPECIFIC STATE LAWS, POLICIES, RULES OR REGULATIONS

West Virginia Code § 60-7-12(a)(5); 60-8-34; 11-16-18(a)(1), attached as Exhibit A hereto.

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

A Short History of Brunch

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

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

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

Cities that have been approved as Home Rule cities are permitted to modify the time at which alcohol may be served on Sundays within their cities and such a modification is the type of innovative solution that was intended by the Legislature when it enacted the Home Rule Statute. See 8-1-5a(a) (intent); see also 8-1-5a(1) (modification of time for sale of alcohol within a Home Rule City is not contrary to the provisions of the Home Rule Statute). The Legislature has acknowledged the value of the Home Rule Program as an incubator for municipalities to try new ideas and solutions to overcome administrative and economic restraints and has enacted several state laws that began as one City's idea in the Home Rule Program. With regard to this issue, Shepherdstown has already successfully enacted its own rules regarding Sunday alcohol sales through Home Rule and several other Home Rule municipalities have come before this Board during its last meeting in July of 2016 to present similar amendments to their Home Rule Plans to enable similar legislation as that in Shepherdstown. If authorized to do the same as our Home Rule sister cities, Wheeling's enactment will provide citizens with the opportunity to witness and experience an unrestricted, traditional brunch service in the first Capital City of the State of West Virginia.

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

There is good reason to believe that enactment of this power by Wheeling will benefit its citizenry and result in an economic enhancement to businesses within the City. The Wheeling CVB has

contacted local resort and restaurant owners to find that owners of Wheeling restaurant, resort and casino facilities firmly believe that their businesses would realize additional revenue per Sunday if alcohol service were to begin at 10:00 a.m. Others have indicated to the Wheeling CVB that although they do not currently serve brunch, the earlier serving time would provide adequate incentive for them to start. Larger hotels, restaurants and resorts have indicated that there is a market for champagne brunch events on which they have heretofore been unable to fully capitalize. The City of Wheeling is geographically situated within a twenty mile span of the Pennsylvania and Ohio state borders. The City's restaurants, resorts and casino are competing for business with similar facilities in Pennsylvania and Ohio who do not have such restrictions on Sunday alcohol sales. The expanded window for alcohol service may also facilitate more events on Sundays benefitting caterers and event venues. All of this increased revenue for both small and large hospitality businesses will result in additional business and occupation tax for the City and increased sales tax revenue for both the City and State. There may also be additional benefits to the City, State and its citizens from increased working hours and/or tips for servers and other hospitality workers.

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

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

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

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

SALE OF WINES

chapter. "Discriminate" as used in this section means the granting of more favorable prices, agreements, terms or services to one person than to another.

(b) For a distributor, his agents, servants or employees to transport or deliver wine to any retail licensee or to any licensee under article seven of this chapter on Sunday or any general election day.

(c) For a distributor to sell wines authorized by this article to licensees under article seven of this chapter at a price which is greater than the price at which such wines are sold and distributed to retailers under this article.

Acts 1981, c. 217.

Library References

Key Numbers

Intoxicating Liquors ⇨124.
Westlaw Key Number Search: 223k124.

Encyclopedias

C.J.S. Intoxicating Liquors §§ 223 to 224,
232.

PART IV—WINE RETAILERS

§ 60-8-32. Where wine may be sold at retail

Except as to sales permitted to be made by farm wineries as defined by section five-a, article one of this chapter, wine sold pursuant to this article may be sold at retail only by the commissioner and in and by grocery stores and wine specialty shops as defined by section two of this article.

Acts 1981, c. 217.

Library References

Key Numbers

Intoxicating Liquors ⇨147(1).
Westlaw Key Number Search: 223k147(1).

Encyclopedias

C.J.S. Intoxicating Liquors § 251.

§ 60-8-33. Certain prohibitions not applicable

The prohibitions contained in subdivisions (h) and (j) of section thirteen, article sixteen, chapter eleven of this Code and the prohibitions contained in subdivisions (1), (2) and (3) of section seven, article six of this chapter shall not apply to the holder of a retailer's license issued under the provisions of this article: Provided, That all prohibitions contained within this article shall apply to the holder of a retailer's license notwithstanding the provisions of this section.

Acts 1981, c. 217.

§ 60-8-34. When retail sales prohibited

It shall be unlawful for a retailer, or a private wine restaurant licensee, his servants, agents or employees to sell or deliver wine between the hours of two o'clock a.m. and one o'clock p.m. on Sundays, or between the hours of two o'clock a.m. and seven o'clock a.m. on weekdays and Saturdays.

Acts 1981, c. 217; Acts 1983, c. 6; Acts 1986, c. 6.

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regulations, or orders of the

commissioner. During such period of one year it shall be unlawful for any distributor or manufacturer or for any other person within the jurisdiction of the state of West Virginia, to buy or receive from such brewer or manufacturer any nonintoxicating beer or have any dealings with such brewer or manufacturer with respect thereto. A distributor, who has not qualified with residence requirements of this article or whose chief place of business is outside the state of West Virginia shall not sell, ship, transport, convey or deliver, or cause to be sold, shipped, transported, conveyed or delivered, directly or indirectly, any nonintoxicating beer to any distributor within the state of West Virginia. If any such distributor shall violate any of the provisions of this article, he shall be punished in like manner as provided for any nonresident brewer or manufacturer who shall violate any provisions of this section.

Acts 1986, c. 37.

Library References

Intoxicating Liquors ⇨79, 98.
Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors §§ 195 to 198,
200.

§ 11-16-17. Container labeling

It shall be unlawful for any brewer, brewpub, manufacturer, distributor or retailer to have affixed upon any beer, ale or other malt beverage or malt cooler container, sold or for sale in this state, a label bearing any design, picture or wording, indicating that the contents of the container are brewed or manufactured for one particular distributor or retailer or group of retailers, or use any trademark other than that of a licensed brewer or manufacturer.

Acts 1986, c. 37; Acts 1991, c. 119.

Library References

Intoxicating Liquors ⇨122.
Westlaw Topic No. 223.
C.J.S. Intoxicating Liquors §§ 1 to 43, 305.

§ 11-16-18. Unlawful acts of licensees; criminal penalties

(a) It shall be unlawful:

(1) For any licensee, his, her, its or their servants, agents or employees to sell, give or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer or cooler on weekdays between the hours of two o'clock a.m. and seven o'clock a.m., or between the hours of two o'clock a.m. and one o'clock p.m., on any Sunday, except in private clubs licensed under the provisions of article seven, chapter sixty of this code, where the hours shall conform with the hours of sale of alcoholic liquors;

(2) For any licensee, his, her, its or their servants, agents or employees to sell, furnish or give any nonintoxicating beer as defined in this article to any person visibly or noticeably intoxicated or to any person known to be insane or known to be a habitual drunkard;

(3) For any licensee, his, her, its or their servants, agents or employees to sell, furnish or give any nonintoxicating beer as defined in this article to any person who is less than twenty-one years of age;

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for the containers when title is retained by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor must initiate the transfer no later than noon of one business day after the delivery;

(5) For any brewer or distributor or brewpub or his, her, its or their agents to transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

(6) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any events: *Provided, however*, That no event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the commissioner;

(7) For any licensee to permit in his or her premises any lewd, immoral or improper entertainment, conduct or practice;

(8) For any licensee except the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code or a holder of a license or a private wine restaurant issued under the provisions of article eight of said chapter to possess a federal license, tax receipt or other permit entitling, authorizing or allowing the licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

(9) For any licensee to obstruct the view of the interior of his or her premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying the premises. The interior of all licensed premises shall be adequately lighted at all times: *Provided*, That provisions of this subdivision do not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of article seven, chapter sixty of this code or the

premises of a private wine restaurant licensed under the provisions of article eight of said chapter;

(10) For any licensee to manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by a license or on premises directly or indirectly used in connection therewith: *Provided*, That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of article eight of said chapter insofar as the private wine restaurant is authorized to serve wine;

(11) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this state;

(12) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his or her premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein the business is located: *Provided*, That no licensee may have in connection with his or her place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;

(13) For any person whose license has been revoked, as provided in this article, to obtain employment with any retailer within the period of one year from the date of the revocation, or for any retailer to knowingly employ that person within the specified time;

(14) For any distributor to sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;

(15) For any licensee to knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;

(16) For any Class B retailer to permit the consumption of nonintoxicating beer upon his or her licensed premises;

(17) For any Class A licensee, his, her, its or their servants, agents or employees, or for any licensee by or through any servants, agents or employees, to allow, suffer or permit any person less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision do not apply where a person under the age of eighteen years is in or upon the premises in the immediate company of his or her parent or parents, or where and while a person under the age of eighteen years is in or upon the premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food,

drink or soft drink therein lawfully prepared and served or sold for consumption on the premises;

(18) For any distributor to sell, offer for sale, distribute or deliver any nonintoxicating beer outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating beer or to sell, offer for sale, distribute or deliver nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such nonintoxicating beer: *Provided*, That nothing herein is considered to prohibit sales of convenience between distributors licensed in this state wherein one distributor sells, transfers or delivers to another distributor a particular brand or brands for sale at wholesale; and

(19) For any licensee or any agent, servant or employee of any licensee to knowingly violate any rule lawfully promulgated by the commissioner in accordance with the provisions of chapter twenty-nine-a of this code.

(b) Any person who violates any provision of this article including, but not limited to, any provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful is guilty of a misdemeanor and, upon conviction thereof, shall be punished for each offense by a fine of not less than twenty-five nor more than five hundred dollars, or confined in the county or regional jail for not less than thirty days nor more than six months, or by both fine and confinement. Magistrates shall have concurrent jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.

(c)(1) A Class B licensee that:

(A) Has installed a transaction scan device on its licensed premises; and

(B) Can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold, furnished or given away by the use of the transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of nonintoxicating beer to an individual who is less than twenty-one years of age by one of his or her employees, servants or agents. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence: (A) That it has

erved or sold for consump-

distribute or deliver any to any distributor by the or to sell, offer for sale, ailer whose principal place igned territory of another l, That nothing herein is distributors licensed in this ers to another distributor a

mployee of any licensee to by the commissioner in ie-a of this code.

s article including, but not or order lawfully promul- statement concerning any for a renewal of a license or who commits any of the misdemeanor and, upon e by a fine of not less than confined in the county or an six months, or by both rrent jurisdiction with the urisdiction in their county ticle.

censed premises; and oyeer, servant or agent to ting beer is sold, furnished ay not be subject to: (i) Any th in subsection (b) of this commissioner; or (iii) any nishing or giving away of n twenty-one years of age ts. Any agent, servant or iven away nonintoxicating e is subject to the criminal , servant or employee who onintoxicating beer to an bject to termination from ability for the termination. e can demonstrate that it ie age of any individual to evidence: (A) That it has

developed a written policy which requires each employee, servant or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished or given away; (B) that it has communicated this policy to each employee, servant or agent; and (C) that it monitors the actions of its employ-ees, servants or agents regarding the sale, furnishing or giving away of nonin-toxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.

(3) "Transaction scan" means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and "transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other governmental identity card.

(d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen years of age to serve in the licensee's lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, gro-cery stores and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: *Provided*, That the person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: *Provided, however*, That the authorization to employ persons under the age of eighteen years shall be clearly indicated on the licensee's license.

Acts 1986, c. 37; Acts 1991, c. 119; Acts 2002, c. 9, eff. 90 days after March 9, 2002; Acts 2003, c. 10, eff. 90 days after March 8, 2003.

Law Review and Journal Commentaries

Judicially Imposed Liquor Liability and De- tions. R. Scott Summers, 93 W. Va. L. Rev. 455- velopments in West Virginia Negligence Ac- (1991).

Library References

Intoxicating Liquors ¶159, 161, 163, 177. C.J.S. Intoxicating Liquors §§ 341 to 343, 345- Westlaw Topic No. 223. to 350, 355, 367, 400, 411.

Notes of Decisions

Persons liable, negligence actions 3

1. In general

Because licenses to sell beer and operate private club are not property rights but are privileges granted by state for specified time, license applicants must meet statutory guidelines and rules and regulations of Commissioner of Alcohol Beverage Control Commission (ABC). Code, 11-16-8(c), 60-7-1 et seq. CDS, Inc. v.

In general 1
 Criminal procedure 5
 Defenses, negligence actions 4
 Negligence actions 2-4
 In general 2
 Defenses 4
 Persons liable 3

§ 60-7-10

STATE CONTROL OF ALCOHOLIC LIQUORS

Note 2

2. Judicial review of administrative decisions

Circuit court should have remanded matter to Commissioner of Alcohol Beverage Control Commission (ABC) for supplementation of record relating to denial of license applications, as circuit court's decision should have been based on record made before agency; Commissioner

had inadvertently omitted reports of his inspections, which were basis for decision, from record submitted to circuit court. Code, 29A-5-4(f, g). CDS, Inc. v. Camper, 1993, 428 S.E.2d 44, 189 W.Va. 63. Administrative Law And Procedure ¶ 819

§ 60-7-11. Licensee must purchase alcoholic liquors from or through commissioner or retail licensee; exceptions

(a)(1) All licensees shall purchase all alcoholic liquors sold by them from the West Virginia alcohol beverage control commissioner at prices established by the commissioner for sales of the alcoholic liquors to the public generally or from any retail licensee licensed under the provisions of article three-a of this chapter, except that the licensees may purchase those wines permitted to be sold at retail pursuant to article eight of this chapter from those distributors licensed pursuant to said article at the same prices the distributors sell the wines to retailers licensed pursuant to said article.

(2) A licensee may by contract approved by the commissioner receive deliveries of alcoholic liquor from a retail liquor store, and the provisions of sections twelve and thirteen, article six of this chapter shall not apply to the transportation of that alcoholic liquor.

(b) In all reports filed under section sixteen, article fifteen, chapter eleven of this code, retail licensees licensed under the provisions of article three-a of this chapter shall separately identify the amount of sales tax on sales of liquor to licensees in the manner required by the tax commissioner.

(c) Notwithstanding the provisions of section thirty, article fifteen, chapter eleven of this code to the contrary, the amount of the sales taxes collected by the tax commissioner shall be deposited in a revolving fund account in the state treasurer's office, designated the "drunk driving prevention fund", and administered by the commission on drunk driving prevention, subject to appropriations by the Legislature.

Acts 1967, c. 16; Acts 1972, c. 5; Acts 1981, c. 217; Acts 1990, c. 9; Acts 1999, c. 5, eff. March 13, 1999.

§ 60-7-12. Certain acts of licensee prohibited; criminal penalties

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

(1) Sell or offer for sale any alcoholic liquors other than from the original package or container;

(2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice, gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;

(3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the con-

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omitted reports of his inspection basis for decision, from record to circuit court. Code, S, Inc. v. Camper, 1993, 428 Va. 63. Administrative Law 819

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c. 9; Acts 1999, c. 5, eff.

ial penalties

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sumption of nonintoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;

(4) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of three o'clock a.m. and one o'clock p.m. on any Sunday;

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine or alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;

(7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of said private club or a guest of such member;

(9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium or nitrous oxide for purposes of human consumption except as authorized by the commissioner;

(10)(A) Employ any person who is less than eighteen years of age in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person;

(B) Employ any person who is between the ages of eighteen and twenty-one who is not directly supervised by a person aged twenty-one or over in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person; or

(11) Violate any reasonable rule of the commissioner.

(b) It is unlawful for any licensee to advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.

(c) Any person who violates any of the foregoing provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars, or imprisoned in the county jail for a period not to exceed one year, or both fined and imprisoned.

Acts 1967, c. 16; Acts 1972, c. 5; Acts 1972, c. 61; Acts 1983, c. 6; Acts 1986, c. 6; Acts 1991, c. 118; Acts 1993, c. 1; Acts 1996, c. 7, eff. 90 days after March 7, 1996.

Cross References

Charitable raffles, generally, see § 47-21-1 et seq.

AN ORDINANCE AUTHORIZING THE CITY OF WHEELING TO SUBMIT TO THE MUNICIPAL HOME RULE BOARD A PROPOSED AMENDMENT, ATTACHED HERETO AS EXHIBIT A, TO THE CITY OF WHEELING'S MUNICIPAL HOME RULE PLAN CONSISTENT WITH WEST VIRGINIA CODE § 8-1-5a, REQUESTING APPROVAL TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES BY CERTAIN ALCOHOL BEVERAGE CONTROL ADMINISTRATION CLASS "A" LICENSE HOLDERS BEGINNING AT 10:00 A.M. ON SUNDAYS.

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

WHEREAS, the Wheeling Convention and Visitor's Bureau and its Board of Directors, which is composed of civic leaders and people involved in the City's hospitality and tourism industries, fully support the City's use of Home Rule to allow earlier Sunday alcohol service in Wheeling thereby enabling restaurants and hotels in the City to be fully operational on Sunday to enhance the City's image in the eyes of business and leisure travelers and enrich the experiences of visitors to Wheeling; and

WHEREAS, the City has determine that allowing alcohol sales at Sunday morning brunch service within the City will produce more revenue and strengthen City businesses, increase City business and occupation tax revenues and City/State sales tax revenues, and increase earnings for servers and other employees working in the hotels and restaurants in the City; and

WHEREAS, due to the fact that the City of Wheeling is geographically situated within a twenty mile span of the Pennsylvania and Ohio state borders, the City's restaurants, resorts and casino are competing with similar facilities in Pennsylvania and Ohio who do not have such restrictions on Sunday alcohol sales; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHEELING:

Section 1. On behalf of the City of Wheeling, the City Manager and City Attorney and the City Administration are hereby authorized and requested to submit to the Municipal Home Rule Board a proposed amendment, attached hereto as Exhibit A, to the City of Wheeling's Municipal Home Rule Plan consistent with West Virginia Code § 8-1-5a, requesting approval to allow the sale of alcoholic beverages by certain Alcohol Beverage Control Administration Class "A" license holders beginning at 10:00 a.m. on Sundays.

Section 2. This Ordinance shall be effective from and after the date of its adoption.

By the Administration.

CITY OF WHEELING



OFFICE OF THE CITY SOLICITOR
CITY COUNTY BLDG., 1500 CHAPLINE STREET
WHEELING, WV 26003

MEMORANDUM

DATE : September 7, 2016
APPLICANT : Rosemary Humway-Warmuth, City Solicitor
RE : City of Wheeling Municipal Home Rule Proposal Amendment

Ladies and Gentlemen:

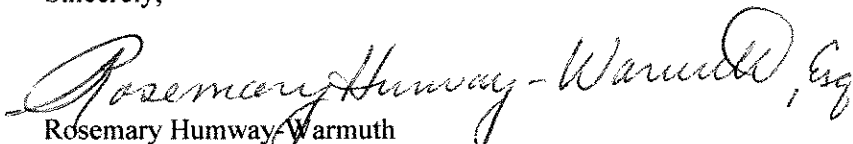
As City Solicitor of the City of Wheeling, I have reviewed West Virginia Code § 8-1-5a and the Municipal Home Rule Pilot Program Application Guidelines, City of Wheeling Municipal Home Rule Plan Proposed Amendment, and other documents related thereto (collectively the "Amendment") as I have deemed necessary for the purposes of this opinion.

Based upon the examination of such documents and my understanding of the intent of the proposed provisions contained in the Amendment, it is my opinion that the Amendment complies with the required statutory requirements in that:

1. The Amendment does not contain any proposed changes to ordinances, acts, resolutions, rules or regulations that are contrary to the:
 - i. US or WV Constitutions,
 - ii. Federal Law
 - iii. Chapter 60 - A Uniform Controlled Substances Act
 - iv. Chapter 61 - Crimes and Their Punishment,
 - v. Chapter 62 - Criminal Procedure - of this code,
 - vi. All other exclusionary provisions as particularly contained n West Virginia Code § 8-1-5a(i) (1) through (17) and (j) (1) and (2).
2. The Amendment does not contain any proposed changes to ordinances, acts, resolutions, rules or regulations that would create a defined contribution employee pension or retirement plan for its employees currently covered by a defined benefit pensions plan.

The Municipal Home Rule Board may rely upon this opinion. As well, the City of Wheeling's Amendment is substantially similar to those proposed by the City of Charleston, WV and various other municipalities that came before the Board on nearly identical Amendments in July of this year. Regarding substantive issues concerning the constitutionality of the Proposed Home Rule Plan Amendment, and the Amendment being in accord with the provisions of West Virginia Code § 8-1-5a, the opinions contained therein by other municipalities are believed to be similarly applicable, and are being referenced herein for purposes of administrative notice.

Sincerely,


Rosemary Humway-Warmuth
City Solicitor


CITY OF WHEELING



CITY COUNTY BLDG., 1500 CHAPLINE STREET
WHEELING, WEST VIRGINIA 26003

I, Janice L. Jones, do hereby certify that Ordinance No. 14859, is a true and exact copy of the ordinance that was adopted unanimously by Wheeling City Council at its regularly scheduled meeting that was held on September 6, 2016. A public hearing was held prior to its adoption and no one signed up to speak.

Given under my hand and the seal of the City of Wheeling this 7th day of
September, 2016.



Janice L. Jones, City Clerk

AN ORDINANCE AUTHORIZING THE CITY OF WHEELING TO SUBMIT TO THE MUNICIPAL HOME RULE BOARD A PROPOSED AMENDMENT, ATTACHED HERETO AS EXHIBIT A, TO THE CITY OF WHEELING'S MUNICIPAL HOME RULE PLAN CONSISTENT WITH WEST VIRGINIA CODE § 8-1-5a, REQUESTING APPROVAL TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES BY CERTAIN ALCOHOL BEVERAGE CONTROL ADMINISTRATION CLASS "A" LICENSE HOLDERS BEGINNING AT 10:00 A.M. ON SUNDAYS.

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

WHEREAS, the Wheeling Convention and Visitor's Bureau and its Board of Directors, which is composed of civic leaders and people involved in the City's hospitality and tourism industries, fully support the City's use of Home Rule to allow earlier Sunday alcohol service in Wheeling thereby enabling restaurants and hotels in the City to be fully operational on Sunday to enhance the City's image in the eyes of business and leisure travelers and enrich the experiences of visitors to Wheeling; and

WHEREAS, the City has determine that allowing alcohol sales at Sunday morning brunch service within the City will produce more revenue and strengthen City businesses, increase City business and occupation tax revenues and City/State sales tax revenues, and increase earnings for servers and other employees working in the hotels and restaurants in the City; and

WHEREAS, due to the fact that the City of Wheeling is geographically situated within a twenty mile span of the Pennsylvania and Ohio state borders, the City's restaurants, resorts and casino are competing with similar facilities in Pennsylvania and Ohio who do not have such restrictions on Sunday alcohol sales; and

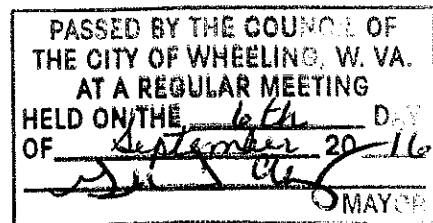
WHEREAS, the City's Comprehensive Plan envisions the reinforcement of Wheeling's position as the region's entertainment and cultural destination, and the active promotion of Wheeling as a city that offers a range of lifestyle choices in order to attract new residents to the City and retain its current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

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHEELING:

Section 1. On behalf of the City of Wheeling, the City Manager and City Attorney and the City Administration are hereby authorized and requested to submit to the Municipal Home Rule Board a proposed amendment, attached hereto as Exhibit A, to the City of Wheeling's Municipal Home Rule Plan consistent with West Virginia Code § 8-1-5a, requesting approval to allow the sale of alcoholic beverages by certain Alcohol Beverage Control Administration Class "A" license holders beginning at 10:00 a.m. on Sundays.

Section 2. This Ordinance shall be effective from and after the date of its adoption.

By the Administration.



AGENDA

Wheeling, West Virginia
DATE: September 6, 2016

CONVENED:

ADJOURNED:

INVOCATION:

ROLL CALL

READING OF THE MINUTES: August 16, 2016

“Public Hearing - Community Development Block Grant (CDBG) Program and Home Investment Partnership (HOME) Program - Performance Hearing Fiscal Year 2015 (July 1 2015 to June 30, 2016)

“Public Hearing - State Required Code Adoptions”

International Building Code 2015

International Plumbing Code 2015

Mechanical Code 2015

Fuel Gas Code 2015

Property Maintenance Code 2015

Energy Conservation Code 2009/Amendments

Residential Code 2015

Existing Building Code 2015

American National Standards for Accessibility 2009/Amendments

“National Electric Code, NFPA 70- 2014

“Public Hearing - Ordinance Authorizing Submission of an Amendment to the City’s Home Rule Plan to the Home Rule Board - Requesting Approval of Alcoholic Beverages Beginning at 10:00 A.M. on Sundays”

MAYOR’S REPORT

1. CLERK’S REPORT

1. Notice of Application to Operate a Private Club - Vagabond Kitchen - 1201 Market St.
2. Notice of Application to Operate a Private Club - Dugger’s Market - 195 29th St.

2. UNFINISHED BUSINESS

1. Ordinance Authorizing Submission of an Amendment to the City’s Home Rule Plan to the Home Rule Board, Requesting Approval of Alcoholic Beverages Beginning at 10:00 on Sundays

HELD OVER: Planning Commission Minutes - 7/11/16; CDBG Program Status Report - 7/31/16; HOME Program Status Report - 7/31/16; Police Civil Service Commission Annual Report - FY 2015; Fire Civil Service Commission Annual Report - FY 2015; Municipal Civil Service Commission Annual Report - FY 2015; Financial Statement - 7/31/16

3. REMARKS FROM MEMBERS OF COUNCIL

4. REPORT OF COMMITTEES

1. Finance Committee Minutes - 8/16/16

5. REPORT OF CITY MANAGER

6. REPORT OF OTHER OFFICERS

1. Wheeling Municipal Parking System Financial Report - 7/31/16
2. Robert C. Byrd Intermodal Transportation Center Financial Report - 7/31/16
3. Human Rights Commission Minutes - 7/19/16
4. Greater Wheeling Sports & Entertainment Authority Minutes - 4/26/16

5. Amending Codified Ordinances - Article 1726 - Adopting American National Standards for Accessibility 2009/Amendments.
6. Amending Codified Ordinances - Article 1729 - Adopting International Plumbing Code 2015
7. Amending Codified Ordinances - Article 1731 - Adopting International Residential Code 2015
8. Amending Codified Ordinances - Article 1733 - Adopting National Electric Code 2014
9. Amending Codified Ordinances - Article 1735 - Adopting International Energy Conservation Code 2009/ Amendments
10. Amending Codified Ordinances - Article 1771 - Adopting International Property Maintenance Code 2015
11. Edgco, Inc. - Main Street Storm Sewer
12. Option Agreement - 1431 Market Street
13. Resolution - Authorizing Signatories - Bond Accounts - WesBanco
14. Resolution - Approving Invoices - Water Treatment Plant Project
15. Resolution - Supporting the Improvement of the Historic Rehabilitation Investment Tax Credit

THOSE WISHING TO BE HEARD

AGENDA

Wheeling, West Virginia
DATE: August 16, 2016

CONVENED:

ADJOURNED:

INVOCATION:

ROLL CALL

READING OF THE MINUTES: August 2, 2016

MAYOR'S REPORT

1. CLERK'S REPORT

2. UNFINISHED BUSINESS

1. Amending Codified Ordinances Art. 1521 and Adopting that Part of the State Code Entitled National Fire Codes.
2. Wheeling Symphony - July 4, 2016 Funfest Fireworks
3. Adopting Traffic Rule No. 4574 - Handicapped Parking - 2514 Chapline St.
4. Adopting Traffic Rule No. 4575 - No Parking Zone - West Sd. Of Market St. (Health Plan Proj.)
5. Memorandum of Understanding - Health Plan Streetscaping
6. O'Brien's Rent-All - South Island Waterline Project
7. O'Brien's Rent-All - Mt. Wood Rd. Waterline Project
8. James White Construction - Idabelle Avenue Waterline Project
9. Savage Construction - Hildreth Avenue Waterline Project
10. Demolition Lien - 79 Economy St.

HELD OVER: Human Rights Commission Minutes - 6/21/16; Traffic Commission Minutes - 7/14/16

3. REMARKS FROM MEMBERS OF COUNCIL

4. REPORT OF COMMITTEES

1. Development Committee Minutes - 8/2/16
2. Finance Committee Minutes - 8/9/16

5. REPORT OF CITY MANAGER

6. REPORT OF OTHER OFFICERS

1. Planning Commission Minutes - 7/11/16
2. CDBG Program Status Report - 7/31/16
3. HOME Program Status Report - 7/31/16
4. Police Civil Service Commission Annual Report - FY 2015
5. Fire Civil Service Commission Annual Report - FY 2015
6. Municipal Civil Service Commission Annual Report - FY 2015
7. Financial Statement - 7/31/16

7. PETITIONS OF REDRESS OR GRIEVANCE

8. PETITIONS OF ALL OTHER KINDS

9. ORIGINAL PROPOSITIONS

1. Ordinance Authorizing Submission of an Amendment to the City's Home Rule Plan to the Home Rule Board, Requesting Approval of Alcoholic Beverages Beginning at 10:00 on Sundays
2. Resolution - Development/Redevelopment Site - 1 Community Street
3. Resolution - Create a Position - To Provide Strategic Services Related to Municipal Park and Recreation Facility Planning and Beautification
4. Resolution - General Fund Budget Revision No. 1

Classified/Legal Advertising Invoice
Intelligencer & News-Register Legals

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WHEELING, WV

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Phone: 304 234-6401

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		<table border="1"> <tr> <td align="center">Identifier</td> </tr> <tr> <td> NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD AT THE REGULAR MEETING OF WHEELING CITY COUNCIL ON THURSDAY, SEPTEMBER 1, 2016 </td> </tr> </table>					
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*=Extend Expiration Date							

STATE OF WEST VIRGINIA,
COUNTY OF OHIO.

I Sharon Sedlowicki for the publisher
of the *Intelligencer* newspaper published in the CITY OF
WHEELING, STATE OF WEST VIRGINIA, hereby
certify that the annexed publication was inserted in said
newspaper on the following dates:

Aug. 5, 12, 2016

Given under my hand this 17th
day of Aug., 2016

Sworn to and subscribed before me this 16th
day of August, 2016 at WHEELING,
OHIO COUNTY, WEST VIRGINIA

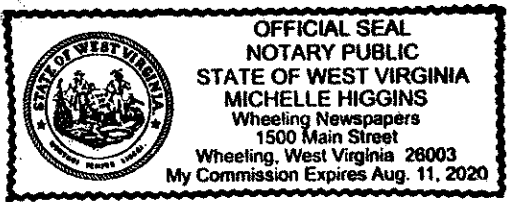
Michelle Higgins
Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA.

My Commission expires Aug. 11, 2020

NOTICE OF PUBLIC HEARING
NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD AT THE REGULAR MEETING OF WHEELING CITY COUNCIL ON TUESDAY, SEPTEMBER 6, 2016 AT 12:00 P.M. IN THE COUNCIL CHAMBERS, 1ST FLOOR, CITY-COUNTY BUILDING, 1500 CHAPLINE ST., WHEELING, WV, ON AN ORDINANCE TO AUTHORIZE AN AMENDMENT TO THE CITY'S HOME RULE PLAN TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES BY CERTAIN ALCOHOL BEVERAGE CONTROL ADMINISTRATION CLASS "A" LICENSE HOLDERS BEGINNING AT 10:00 A.M. ON SUNDAYS. INTERESTED PARTIES MAY APPEAR AT THE PUBLIC HEARING AND BE HEARD WITH RESPECT TO THE ORDINANCE AND THE PROPOSED AMENDMENT TO THE CITY'S HOME RULE PLAN. A COPY OF THE ORDINANCE AND THE PROPOSED AMENDMENT TO THE CITY'S HOME RULE PLAN MAY BE INSPECTED IN THE CITY CLERK'S OFFICE BEGINNING AUGUST 5, 2016, BETWEEN THE HOURS OF 8:30 A.M. AND 5:00 P.M., MONDAY THROUGH FRIDAY.

ROBERT HERRON
CITY MANAGER
Int. Aug. 5, 12, 2016
N.R. Aug. 5, 12, 2016



Classified/Legal Advertising Invoice
Intelligencer & News-Register Legals

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WHEELING, WV

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26003

No: 235607

Phone: 304 234-6401

Ad No 235607	Customer No: L00131	Start Date 08-05-2016	Stop Date 08-12-2016	Category: Announcements		Classification: Legal Notices			
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Publications ... Runs News-Register-Legals ... 2		Solicitor: LE	Origin: 1	Sales Rep: 0	Credit Card	Credit Card Number	Card Expire		
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		*=Extend Expiration Date							

STATE OF WEST VIRGINIA,
COUNTY OF OHIO.

I, Sharon Sulloway for the publisher
of the Wheeling News Register newspaper published in the
CITY OF WHEELING, STATE OF WEST VIRGINIA, hereby
certify that the annexed publication was inserted in said
newspaper on the following dates:

Aug 5, 12, 2016

Given under my hand this 17th
day of Aug., 2016

Sworn to and subscribed before me this 18th
day of August, 2016 at WHEELING,
OHIO COUNTY, WEST VIRGINIA

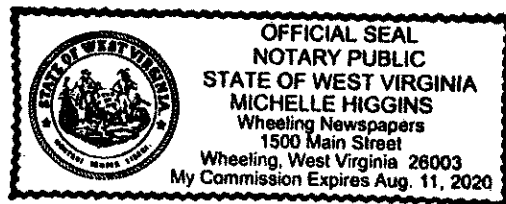
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ROBERT HERRON
CITY MANAGER
Int. Aug. 5, 12, 2016
N.R. Aug. 5, 12, 2016



CITY OF WHEELING



CITY COUNTY BLDG., 1500 CHAPLINE STREET
WHEELING, WEST VIRGINIA 26003

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ROBERT HERRON, CITY MANAGER

Please publish in The Intelligencer and Wheeling News Register on August 5 and August 12, 2016.

Please send bill to: Janice Jones, City Clerk, 1500 Chapline Street, Wheeling, WV 26003