



City of Charles Town

101 East Washington Street, P.O. Box 14, Charles Town, WV 25414
Phone: (304) 725-2311 ♦ Fax: (304) 725-1014 ♦ Web: www.charlestownwv.us

MAYOR

September 20, 2016

Peggy A. Smith

CITY
COUNCIL

*Ann
Paonessa*

*Chet
Hines*

*Sandra
Slusher-
McDonald*

*Bob
Trainor*

*Michael
Tolbert*

*Jonathan
Wertman*

*Nick
Zaglifa*

*Michael
George*

City
Manager

*Paul D.
Mills*

Ms. Debbie Browning
Executive Assistant/Commerce Privacy Officer
WV Department of Commerce/Development Office
Building 6, Room 504
State Capitol Complex
Charlestown, WV 25305-0311

**RE: City of Charles Town Amended Home Rule Plan
October 3, 2016 Home Rule Board Meeting**

Dear Ms. Browning:

At the regular City Council meeting held on September 19, 2016, the Council approved the attached Amendment to the City of Charles Town's Home Rule Plan.

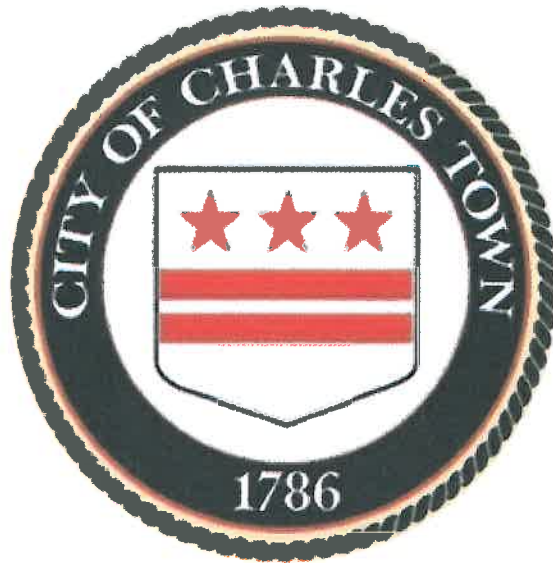
Enclosed, please find the original and (8) copies of the Amended Plan. The City of Charles Town requests that we be placed on the Municipal Home Rule Board Agenda for Monday, October 3, 2016.

If you have any questions or need further information, please contact my assistant at 304 724-3250 or by email at dwilson@charlestownwv.us. The City appreciates your help with this matter.

Sincerely,

Peggy A. Smith, Mayor
City of Charles Town

cc: City Council
Paul David Mills, City Manager
Chris Bontoft, Finance Director
Todd Wilt, Operations Director
Chris Kutcher, Chief of Police



**Application to the West Virginia Municipal Home Rule Board to
Amend the City's Approved Home Rule Plan**

October 3rd Meeting

Prepared and submitted by

Paul David Mills – City Manager – citymanager@charlestownwv.us

Debbie Wilson – Administrative Assistant – dwilson@charlestownwv.us

(304) 725-2311

www.charlestownwv.us



Municipal Home Rule Amendment to Approved Plan APPLICATION CHECKLIST City of Charles Town

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

SECTION II: NARRATIVE	
Page No.	
4	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.
4	Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.
4	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"> 1) Proposed solution(s) in one of the five areas (tax/administrative/organization/ personnel/other) 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.

SECTION III: AFFIDAVITS	
Page No.	
5	Hearing Mandate Verification
6	Certification of Public Hearing Comments
8	Publication Mandate Verification
9	Ordinance Authorizing Submission of Plan
-	Fiscal Impact Worksheets/Formulas (if revenue related)
10	Attorney Opinion (application complies with statutory requirements)
11	State of West Virginia Fees Statement (none outstanding)



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Executive Summary

The city of Charles Town is a Class III city located in Jefferson County in the eastern panhandle. Charles Town is the county seat of Jefferson County and home to American Public University System (APUS) and the Hollywood Casino at Charles Town Races.

The City was accepted into the West Virginia Home Rule Program by the Home Rule Board on October 5, 2014. The proposed changes approved in our initial application have been implemented.

The City proposes to enact an ordinance permitting any private club licensee or private wine bed & breakfast or restaurants to serve beer, wine or alcoholic liquors after 10:00 a.m. on Sundays.

Schedule

DATE	RESPONSIBLE PARTY	ACTION
Tuesday, July 5 th	City Staff	City Staff to present a report to the City Council
Friday July 15 th	City Staff	Deadline to have draft amendment to the Home Rule
Monday, July 18 th	City Council	Vote to submit the amendment for public inspection, set public hearing and public notice
Tuesday, July 19 th	City Staff	Makes Plan amendment available to the public via City's website with hard copies available at City Hall and the Library
Tuesday July 19 th	City Attorney	Send the proposed amendment to the City Attorney for a review to ensure that the proposed changes are consistent with W.Va. Code § 8-1-5a.
Wednesday, July 27 th	City Staff	Notice of Public Hearing will be placed on the City's website with a comment button
Thursday, July 28 th	Spirit of Jefferson	Class II Legal Notice – at least 30 days prior to the hearing
Thursday, August 4 th	Spirit of Jefferson	Class II Legal Notice – at least 30 days prior to the hearing
Monday, August 11 th – No Public Hearing		
Tuesday, September 6 th	Public	Council to hold Public Hearing to hear concerns regarding the proposed amendment to the Home Rule Plan
Tuesday, September 6 th	City Council	1 st Reading of an Ordinance Authorizing the Submittal of an Amendment to the Approved Home Rule Plan
Monday, September 19 th	City Council	2 nd Reading of an Ordinance Authorizing the Submittal of an Amendment to the Approved Home Rule Plan
Tuesday, September 20 th	City Staff	Send final application for Amendment to the Home Rule Plan to the Board
Monday, September 26 th – Home Rule Board Meeting – Morgantown		



Monday October 17 th	City Council	1 st reading of ordinances approved by the Home Rule
Monday November 7 th	City Council	2 nd reading of ordinances approved by the Home Rule
Tuesday, November 8 th	City-wide	New laws are in effect



Application – Section I: Applicant Information

Section I: Applicant Information																			
A. General Information																			
Name of Municipality	City of Charles Town, WV																		
Certifying Official	Peggy A. Smith	Title:	Mayor																
Contact Person	Paul David Mills	Title	City Manager																
Address	PO Box 14,																		
City, State, Zip:	Charles Town WV 25414																		
Telephone #	(304) 725-2311	Fax #																	
Email Address	citymanager@charlestownwv.us																		
2010 Census Population	5,259																		
B. Municipal Classification																			
<input type="checkbox"/> Class I <input type="checkbox"/> Class II <input checked="" type="checkbox"/> Class III <input type="checkbox"/> Class IV																			
C. Category of Issues to be Addressed (please attach descriptions for applicable categories)																			
<input type="checkbox"/> Tax <input type="checkbox"/> Organization <input checked="" type="checkbox"/> Administrative <input type="checkbox"/> Personnel <input type="checkbox"/> Other																			
SECTION II: Narrative																			
A. Introduction																			
<p>The City of Charles Town is a place with a rich history and an emerging arts and cultural movement. The City recently completed work on the Washington Arts Heritage District and the centerpiece of its downtown redevelopment, Charles Washington Hall, will open later this summer. This year the City charged a Citizen Advisory Committee with updating their Comprehensive Plan, which will engage the community in assessing where we are, where do we want to go and how do we get there. Charles Town is primed to emerge as a preferred destination in West Virginia, but it's limited by competition from neighboring states, who may be operating under different regulations and varied standards.</p> <p>Our population is diverse and made up of a healthy mix of long-time residents, new arrivals and people just passing through, but all expect a level of service that requires innovation to achieve efficiencies. Despite any challenges, the City Council continues to provide a full service government to its citizens</p> <p><u>Mayor:</u> Peggy A. Smith</p> <p><u>City Council</u></p> <table border="0"> <tr> <td>Sandy Slusher – McDonald</td> <td>Councilmember, Ward I</td> </tr> <tr> <td>Michael Tolbert</td> <td>Councilmember, Ward I</td> </tr> <tr> <td>Chet Hines</td> <td>Councilmember, Ward II</td> </tr> <tr> <td>Nick Zaglifa</td> <td>Councilmember, Ward II</td> </tr> <tr> <td>Ann Paonessa</td> <td>Councilmember, Ward III</td> </tr> <tr> <td>Jonathon Wertman</td> <td>Councilmember, Ward III</td> </tr> <tr> <td>Bob Trainor</td> <td>Councilmember, Ward IV</td> </tr> <tr> <td>Micheal George</td> <td>Councilmember, Ward IV</td> </tr> </table> <p><u>City Manager – Clerk</u> Paul David Mills</p>				Sandy Slusher – McDonald	Councilmember, Ward I	Michael Tolbert	Councilmember, Ward I	Chet Hines	Councilmember, Ward II	Nick Zaglifa	Councilmember, Ward II	Ann Paonessa	Councilmember, Ward III	Jonathon Wertman	Councilmember, Ward III	Bob Trainor	Councilmember, Ward IV	Micheal George	Councilmember, Ward IV
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Bob Trainor	Councilmember, Ward IV																		
Micheal George	Councilmember, Ward IV																		



B. Specific Problem(s) and Solution(s) to be addressed by this Amendment to Charles Town’s Home Rule Plant

- 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. Charles Town is home to several dining establishments and bed & breakfasts that lose significant business as patrons travel across state lines to have the option to order an alcoholic beverage with their Sunday Brunch.
- ii. **Authority:** WV 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 WV 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 Sunday. WV 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. Sunday (except that private clubs licensed under Article 7, Chapter 60 of the WV Code shall operate within hours conforming with the hours of sales of alcoholic liquor). The Governor recently signed SB 298 that authorizes County Commissions to authorize a referendum to allow alcohol sales prior to 1:00 p.m. on Sunday.
- iii. **Solution:** The City will enact an ordinance permitting any private club licensee or private wine bed and breakfast or restaurant to serve beer, wine, and alcoholic beverages after the hours of 10:00 a.m. on Sundays

To the extent required by law, this plan shall terminate on or prior to the first day of July 2019, however, all ordinances enacted under the provisions of this plan shall continue in full force and effect until repealed. Further, the City of Charles Town will cooperate fully with any performance review conducted by the Joint Committee on Government and Finance and provide progress reports to the Home Rule Board as needed.

The above-mentioned solution will allow for sustained economic competitiveness for the City of Charles Town.

SECTION III: Affidavits	
Hearing Mandate Verification	
Publication Mandate Verification	
Ordinance Authorizing Submission of the Plan	
Attorney Opinion (application complies with statutory requirements)	
State of West Virginia Fees Statement (none outstanding)	



Hearing Mandate Verification

NOTICE OF PUBLIC HEARING

CITY OF CHARLES TOWN PROPOSED AMENDMENT TO THE APPROVED HOME RULE PLAN

A public hearing will be held on Tuesday, September 6th at 7:00 in the Council Chambers at Charles Town City Hall, located at 101 East Washington St., Charles Town WV 25414. The purpose of the hearing is to solicit public comment and input regarding the City's Proposed Amendment to the Home Rule Plan. The purpose of the amendment is to allow Sunday alcohol sales beginning at 10 a.m. Copies of the proposed amendment can be obtained at City Hall or it may be viewed on-line at www.charlestownwv.us. Interested parties that wish to be heard on the matter are encouraged to attend this meeting.

By Order of the Charles Town City Council

Paul David Mills
City Manager – Clerk



Certification of Public Hearing Comments

September 6, 2016

I, Paul D. Mills, City Manager – Clerk for the City of Charles Town, do hereby acknowledge that during the Public Hearings held at the Charles Town City Council meeting on Tuesday, September 6, 2016, at 7:00 p.m., the following comments were presented from the public on the proposed amendment to the City's Home Rule Application to:

- Allow alcohol sales on Sunday at 10:00 a.m. in private clubs, wine bed & breakfasts and restaurants in the corporate limits

Patsy Noland spoke in favor of the amendment and believes that the amendment would benefit local businesses where alcohol could be served to customers at 10:00 a.m. and help avoid customers going to neighboring states to be able to order liquor with their brunch.

Paul David Mills
City Manager – Clerk

September 6, 2016
Date



City of Charles Town

101 East Washington Street, P.O. Box 14, Charles Town, WV 25414
Phone: (304) 725-2311 ♦ Fax: (304) 725-1014 ♦ Web: www.charlestownwv.us

AFFIDAVIT OF PUBLIC HEARING

MAYOR

Peggy A. Smith

**STATE OF WEST VIRGINIA,
COUNTY OF JEFFERSON, TO-WIT:**

I, Paul David Mills, having been duly sworn, do hereby state as follows:

CITY
COUNCIL

*Ann
Paonessa*

*Chet
Hines*

*Sandra
Slusher-
McDonald*

*Bob
Trainor*

*Michael
Tolbert*

*Jonathan
Wertman*

*Nick
Zaglaja*


*Michael
George*

City
Manager

*Paul D.
Mills*

1. I am over 18 years of age and am employed by the City of Charles Town as the City Manager/City Clerk.
2. A copy of the City of Charles Town's proposed amendment to its Home Rule Plan, contained within its application to the WV Municipal Home Rule Pilot Program Phase II, was made available for public inspection at the Charles Town City Hall, 101 E. Washington Street, Charles Town, West Virginia each business day during regular business hours beginning July 19, 2016 up to, and including September 6, 2016.
3. A public hearing was properly noticed and held at the aforementioned Charles Town City Hall on the City of Charles Town's proposed Home Rule Plan on September 6, 2016

Further Affiant sayeth not.




Paul David Mills

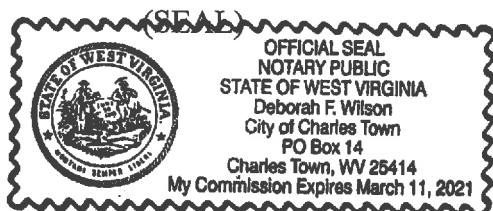
Taken and sworn to before me this 7th day of September 2016.

My Commission expires:

March 11, 2021



Notary Public





Publication Mandate Verification

Notice of the hearing will run as a Class I legal advertisement in the Spirit of Jefferson on Thursday, July 28th and Thursday, August 4th. Once received from the newspaper, a certification of publication will be inserted here.

Certificate of Publication

JEFFERSON PUBLISHING COMPANY, INC., Publisher
SPIRIT OF JEFFERSON ADVOCATE

Charles Town, W. Va. July 27 20 16

I hereby certify that the annexed Notice of public hearing
in the case of Proposal amendment to the approved home rule plan

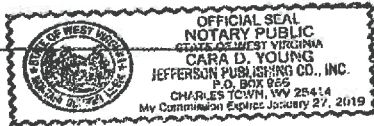
has been published once a week for two successive weeks, in the Spirit of Jefferson
Advocate, a newspaper published in Charles Town, Jefferson County, West Virginia, in the issues of
July 27 + Aug. 3, 20 16,

as required by law.

[Signature]
Editor/Manager, Spirit of Jefferson Advocate

State of West Virginia
County of Jefferson
Personally appeared before me, Mary Burns, Editor/Manager
of the Spirit of Jefferson Advocate, and made oath that the above certificate is true and correct.

Commission expires



Cara D. Young
Notary Public

NOTICE OF PUBLIC HEARING CITY OF CHARLES TOWN PROPOSED AMENDMENT TO THE APPROVED HOME RULE PLAN

A public hearing will be held on Tuesday, September 6th at 7:00 in the Council Chambers at Charles Town City Hall, located at 101 East Washington St., Charles Town WV 25414. The purpose of the hearing is to solicit public comment and input regarding the City Proposed Amendment to the Home Rule Plan. The purpose of the amendment is to allow Sunday alcohol sales beginning at 10 a.m. Copies of the proposed amendment can be obtained at City Hall or it may be viewed on-line at www.charlestownwv.us. Interested parties that wish to be heard on the matter are encouraged to attend this meeting.

By order of the Charles Town City Council
Paul David Mills
City Manager - Clerk
7/27/2016



Ordinance Authorizing Submission of the Plan

ORDINANCE 2016-012


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

Be it ordained by the City Council of the City of Charles Town, West Virginia, that the Mayor is hereby authorized to submit an Amendment to the approved Home Rule Application to the Municipal Home Rule Board in accordance with West Virginia Code §8-1-5a. A copy of said amendment is attached hereto.

CITY OF CHARLES TOWN


Peggy A. Smith, Mayor

ATTEST:


Paul David Mills, City Manager – Clerk

Date of First Reading: September 6, 2016

Passed: September 19, 2016



City Attorney Opinion Letter

HAMSTEAD & ASSOCIATES, L.C.

BRAUN A. HAMSTEAD (WV) ATTORNEYS AT LAW ANDREW FAULKNER PAHL (WV)
118 FAIRFAX BOULEVARD
CHARLES TOWN, WEST VIRGINIA 25414
PHONE: (304) 725-1468 FAX: (304) 725-1821
E-MAIL: bhamstead@hamsteadandassociates.com

AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE CITY OF CHARLES TOWN, PART FIVE-GENERAL OFFENCES, ARTICLE 521- LIQUOR CONTROL, BY AMENDING AND REENACTING SECTIONS 521.03, 521.07 AND 521.09, AND ADDING SECTIONS 521.15 TO ALLOW FOR SUNDAY ALCOHOL SALES AFTER 10 AM

Date: August 23, 2016
Applicant: City of Charles Town, WV
Re: Legal Opinion on City of Charles Town Municipal Home Rule Ordinances
To: Ladies & Gentlemen of the WV Municipal Home Rule Board

As an attorney licensed in the State of West Virginia, I have reviewed West Virginia Code Section 8-1-5a, the Municipal Home Rule Pilot Program Application Guidelines, the proposed City of Charles Town ordinances implementing that City's home rule plan, and other documents related thereto, as I deem necessary for the purposes of this opinion. This opinion letter is intended to accompany, and be made a part of, an application for Home Rule Board approval of the following proposed ordinance implementing, in pertinent part, the City's Home Rule Plan:

"AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE CITY OF CHARLES TOWN, PART FIVE-GENERAL OFFENCES, ARTICLE 521- LIQUOR CONTROL, BY AMENDING AND REENACTING SECTIONS 521.03, 521.07 AND 521.09, AND ADDING SECTIONS 521.15 TO ALLOW FOR SUNDAY ALCOHOL SALES AFTER 10 AM"

Based upon the examination of such documents and my understanding of the intent of the proposed provisions contained in the subject Charles Town ordinance referred to above, it is my opinion that said ordinance complies with the statutory requirements within WV Code Section 8-1-5a, including those requirements contained within Section 8-15a(j) regarding Powers and Duties of Municipalities, Section 8-1-5a(k) regarding Prohibited Acts, and all other such provisions.

The Municipal Home Rule Board may rely upon this opinion.

Respectfully submitted,

Braun Hamstead
WV Bar #1568



City of Charles Town

101 East Washington Street, P.O. Box 14, Charles Town, WV 25414
Phone: (304) 725-2311 ♦ Fax: (304) 725-1014 ♦ Web: www.charlestownwv.us

September 20, 2016

MAYOR

Peggy A. Smith

AFFIDAVIT

**STATE OF WEST VIRGINIA
COUNTY OF JEFFERSON, TO-WIT:**

CITY
COUNCIL

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

*Ann
Paonessa*

1. I, Chris Bontoft, am the Finance Director for the City of Charles Town.
2. As Finance Director I am familiar with all of the financial affairs for the City of Charles Town.
3. I certify the City of Charles Town is not delinquent or have outstanding any payment due the State of West Virginia.

*Chet
Hines*

*Sandra
Slusber-
McDonald*

*Bob
Trainor*

*Michael
Tolbert*

*Jonathan
Wertman*

*Nick
Zaglifa*

*Micheal
George*

City
Manager

*Paul D.
Mills*

And further the affiant sayeth not.

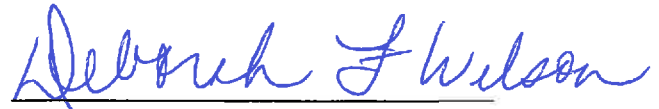


Chris Bontoft

**Taken and sworn to and subscribed before me this 20th day of
September, 2016.**

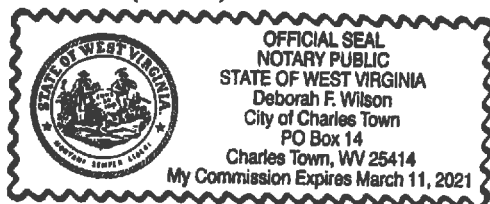
My commission expires:

March 11, 2021



Notary Public

(SEAL)





Proposed Ordinance

ORDINANCE 2016-

AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE CITY OF CHARLES TOWN, PART FIVE-GENERAL OFFENCES, ARTICLE 521- LIQUOR CONTROL, BY AMENDING AND REENACTING SECTIONS 521.03, 521.07 AND 521.09, AND ADDING SECTIONS 521.15 TO ALLOW FOR SUNDAY ALCOHOL SALES AFTER 10 AM

WHEREAS, on October 3, 2016, the West Virginia Municipal Home Rule Board approved the amendment to the City of Charles Town's Municipal Home Rule application to allow for the sale of alcoholic beverages after 10:00 a.m. on any Sunday by certain licensees and;

WHEREAS, the City Council wishes to amend and reenact the current City ordinances relating to the sale of alcoholic beverages to permit certain licensees to sell alcoholic beverages after 10:00 a.m. on any Sunday, and to enact a new section clarifying that certain licensees shall be permitted to sell alcoholic beverages after 10:00 a.m. on any Sunday.

NOW THEREFORE, be it ordained by the City Council of the City of Charles Town that:

521.03 PROHIBITED ACTS GENERALLY.

No person shall:

- (a) Manufacture or sell in this City, without a license, any alcoholic liquor except as permitted by West Virginia Code Chapter 60;
- (b) Aid or abet in the manufacture or sale of alcoholic liquor without a license, except as permitted by West Virginia Code Chapter 60;
- (c) Sell without a license any alcoholic liquor other than provided by West Virginia Code Article 60-6 and Section 521.03A;
- (d) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, unrectified or impure form of ethyl alcohol, or any other foreign or deleterious substance or liquid;
- (e) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this State;
- (f) Advertise any alcoholic liquor in this State except in accordance with the rules and regulations of the West Virginia Alcohol Beverage Control Commissioner;
- (g) Distribute, deal in, process or use crowns, stamps or seals required under the authority of West Virginia Code Chapter 60, except in accordance with the rules and regulations prescribed by the West Virginia Alcohol Beverage Control Commissioner.
(WV Code 60-6-7)
- (h) Manufacture, sell, give or offer to make a sale or gift of, transport or otherwise possess any alcoholic liquor or non-intoxicating beer except as permitted by West Virginia Code Chapters 11 and 60.
- (i) Whoever violates subsection (a) to (g) hereof is guilty of a misdemeanor for a first offense.



521.03A Sale of Alcohol on Sundays.

- (a) “On-Premise Licensee” shall be defined to mean any person who holds one of the following Class A licenses issued by the West Virginia Alcohol Beverage Control Administration to sell alcoholic beverages:
- i. Private Club (less than 1,000 members) - liquor, wine & non-intoxicating beer;
 - ii. Private Club (1,000 or more members) - liquor, wine & non-intoxicating beer;
 - iii. Fraternal Club (Non-Profit) - liquor, wine & non-intoxicating beer;
 - iv. Fraternal Club (Non-Profit) - non-intoxicating beer;
 - v. Tavern - non-intoxicating beer;
 - vi. Private Wine Restaurant - wine only;
 - vii. Private Wine Restaurant - wine & non-intoxicating beer only;
 - viii. Private Wine Spa - wine only;
 - ix. Private Wine Bed & Breakfast - wine only;
 - x. Brew Pub (Resident Brewer/Importer License Required);
 - xi. Special Events (Fairs and Festivals) - wine & non-intoxicating beer;
 - xii. Special Events (Fairs and Festivals) - wine only;
 - xiii. Special Events (Fairs and Festivals) - non-intoxicating beer only; or Growler.
- (b) “Person” shall be defined to mean an individual, firm, corporation, association, partnership, limited partnership, Limited Liability Company or other entity, regardless of its form, structure or nature.
- (c) Notwithstanding anything to the contrary contained in the Code of City of Charles Town, Code of West Virginia, or Code of State Rules of West Virginia, any On-Premise Licensee shall be permitted to sell alcoholic beverages pursuant to the terms of its license, beginning at ten o’clock a.m. (10:00 AM) on any Sunday.

521.07 ACTS PROHIBITED BY NONINTOXICATING BEER LICENSEE.

- (a) No licensee under West Virginia Code Article 11-16, his, her, it’s or their servants, agents or employees shall sell, give or dispense, and no individual shall drink or consume, in or on any licensed premises or in any rooms directly connected therewith, non-intoxicating beer or cooler on weekdays between the hours of 2:00 a.m. and 7:00 a.m., or between the hours of 2:00 a.m. and 1:00 p.m. on any Sunday, except in private clubs licensed under the provisions of West Virginia Code Article 60-7 and Section 521.03A, where the hours shall conform with the hours of sale of alcoholic liquors.
- (b) No licensee, his, her, it’s or their servants, agents or employees shall sell, furnish or give any non-intoxicating 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;
- (c) No licensee, his, her, it’s or their servants, agents or employees, shall sell, furnish or give any non-intoxicating beer as defined in this article to any person who is less than twenty- one years of age;
- (d) No distributor shall sell or offer to sell, and no retailer shall purchase or receive, any non-intoxicating 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 subsection. 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 such containers when title is retained by the vendor;
- (e) No brewer or distributor or brewpub or his, her, its or their agents, shall transport or deliver non-intoxicating beer as defined in this article to any retail licensee on Sunday;
- (f) No brewer or distributor shall 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 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 such events: provided however that no such event shall be sponsored



which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the non-intoxicating Beer Commissioner.

- (g) No licensee shall permit in his premises any lewd, immoral or improper entertainment, conduct or practice;
- (h) No licensee except the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7, or a holder of a license for a private wine restaurant issued under the provisions of West Virginia Code Article 60-8, shall possess a Federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks other than non-intoxicating beer;
- (i) No licensee shall obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times: provided, that provisions of this subsection shall not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of West Virginia Code Article 60-7, or the premises of a private wine restaurant licensed under the provisions of West Virginia Code Article 60-8;
- (j) No licensee shall manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith: provided, that the prohibition contained in this subsection with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7, nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of West Virginia Code Article 60-8, insofar as such private wine restaurant is authorized to serve wine;
- (k) No retail licensee shall sell or dispense non-intoxicating 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;
- (l) No licensee shall permit loud, boisterous or disorderly conduct of any kind upon his or her premises or permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein such business is located: provided, that no licensee shall 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;
- (m) No person whose license has been revoked, shall obtain employment with any retailer within the period of one year from the date of such revocation, and no retailer shall employ knowingly any such person within such time;
- (n) No distributor shall sell, possess for sale, transport or distribute non-intoxicating beer except in the original container;
- (o) No licensee shall knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this State or Municipality;
- (p) No Class B retailer shall permit the consumption of non-intoxicating beer upon his licensed premises;
- (q) No Class A licensee, his, her, it's or their servants, agents or employees, or any licensee by or through such servants, agents or employees, shall allow 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 subsection shall not apply where such person under the age of eighteen years is in or upon such premises in the immediate company of his or her parent or parents, or where and while such person under the age of eighteen years is in or upon such 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 such premises;
- (r) No distributor shall sell, offer for sale, distribute or deliver any non-intoxicating beer outside the territory assigned to such distributor by the brewer or manufacturer of such non-intoxicating beer or sell, offer for sale, distribute or deliver any such non-intoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such



non-intoxicating beer: provided, that nothing herein shall be deemed to prohibit sales of convenience between distributors licensed in this State wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale; and

- (s) No licensee or any agent, servant or employee of any such licensee shall knowingly violate any rule or regulation lawfully promulgated by the Commissioner.
- (t) Any person who violates any provision of this section, or any rule, regulation 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, shall be punished as provided in Section 521.99.
- (u) Nothing in this section nor any rule or regulation of the Commissioner shall prevent or be deemed to prohibit any licensee from employing any person who is at least eighteen years of age to serve in such licensee's lawful employ, including the sale or delivery of non-intoxicating 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 recreation activities, including, but not limited to, nationally franchised fast food outlets, family- oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: provided, that such person's duties shall not include the sale or delivery of non-intoxicating beer or alcoholic liquors: provided, however, that the authorization to employ such persons under the age of eighteen years shall be clearly indicated on the licensee's license.

521.09 ACTS PROHIBITED BY PRIVATE CLUB LICENSEE.

- (a) No person licensed under West Virginia Code Article 60-7, or his agent, employee or member thereof, on such licensee's premises shall:
 - (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 non-intoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of non-intoxicating 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 non-intoxicating 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 non-intoxicating beer, wine or alcoholic liquor or the use of drugs;
 - (5) Sell, give or dispense non-intoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of 3:00 a.m. and 1:00 p.m. on Sunday except as provided under Section 521.03A;
 - (6) Permit the consumption by, or serve to, on the licensed premises any non-intoxicating 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 the 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 non-intoxicating beer, wine or alcoholic liquors to any person;



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- 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 non-intoxicating beer, wine or alcoholic liquors to any person; or
- (11) Violate any reasonable rule or regulation of the Alcohol Beverage Control Commissioner.
- (b) No licensee shall advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat. (WV Code 60-7-12)

BE IT FURTHER ORDAINED by the City Council of the City of Charles Town that this Ordinance shall take effect upon the date of adoption.

**CITY OF CHARLES TOWN,
A Municipal Corporation**

Peggy A. Smith, Mayor

ATTEST:

Paul David Mills, City Manager – Clerk

Date of First Reading: October 17, 2016

Passed: November 7, 2016