



Proposed Amendment to the

City of Charleston
Municipal Home Rule Plan

April 19, 2013



CITY OF CHARLESTON
OFFICE OF THE MAYOR

April 15, 2013

West Virginia Municipal Home Rule Board
1900 Kanawha Boulevard, East
Charleston, West Virginia

Dear Members of the Municipal Home Rule Board,

On behalf of the citizens and elected leaders of Charleston, I thank all of you who have worked toward expanding home rule for municipal governments in our State. As members of the Board, you understand the strong and close connection between local governments and the people they serve in cities throughout West Virginia.

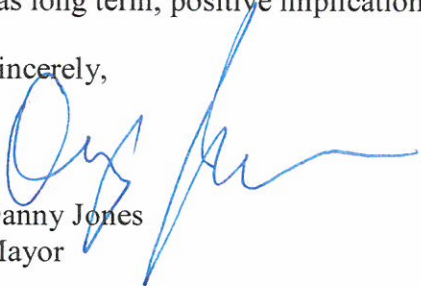
Charleston has enjoyed a very strong working relationship with this Board since it was created, and our city and citizens have reaped benefits from the elements of the programs implemented here so far. The Legislative Audit, which explained the value of Home Rule and exclaimed the success of the program, is a lasting testament to how well this Board has worked with Charleston and the other cities involved in the pilot program.

You know the theory: Government is most responsive and responsible when it is closest to the people it serves. The positive results of the Legislative Audit affirm that you have provided the leadership needed to make that theory an effective reality in West Virginia.

As the pilot program nears the completion of its run, the elected leaders of Charleston and our constituents are seeking one more amendment to our Home Rule program. The proposal that follows is designed to improve our city and to make Charleston a more attractive place for business development, visitors, tourism and economic investment. Since I began serving as Mayor nearly ten years ago, I have heard consistently from many knowledgeable sources that improvements to the Charleston Civic Center are crucial toward improving the facility's ability to attract special events, conferences and conventions. By having the authority to enact a consumer sales/use tax, we will have the ability to invest in our community's primary public facility, attract new business investment as a direct result, and look for ways to provide some tax relief in the process. We have sought to develop a balanced approach, and it has widespread support.

I am grateful that West Virginia's capital city was included in the original pilot program for Home Rule, and I appreciate how members of this Board have worked with us effectively to improve Charleston within the parameters of the program. I look forward to working with you on this proposal as well that has long term, positive implications for our city.

Sincerely,


Danny Jones
Mayor

City of Charleston Home Rule Plan Proposed Amendment

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City of Charleston Home Rule Plan Proposed Amendment

Proposed Amendment

Introduction

In 2008, pursuant to the authority provided by W. Va. Code § 8-1-5a, the Municipal Home Rule Board (the “Board”) selected the City of Charleston (“Charleston”), along with three other municipalities, to participate in the West Virginia Home Rule Pilot Program and approved the original Home Rule Plan of Charleston. As evidenced by the Performance Evaluation and Research Division’s special report on the Municipal Home Rule Pilot Program, Charleston has successfully and responsibly exercised its powers under Home Rule and has, without challenge from either its City Council or citizenry, judiciously implemented its plan. Two of Charleston’s Board approved proposals have been implemented state wide, and three more of its proposals are now under consideration for state wide implementation.

Under W. Va. Code § 8-1-5a(f)(5), the Board has the power to authorize amendments to approved plans and has done so at the request of other participating municipalities. Until now, Charleston has not requested an amendment to its approved plan. For the reasons set forth herein, Charleston is now requesting that the Board authorize the following amendment to Charleston’s approved plan in the category of taxation.

Specific state laws, policies, rules or regulations

W. Va. Code §§ 8-13C-4(a) & 8-13C-4(b)

Problem: State law unduly restricts Charleston’s ability to timely and effectively generate revenue for essential economic development in a manner and method consistent with local needs and resources, and current economic conditions.

West Virginia law currently provides little flexibility with respect to taxation structure and funding sources available to municipalities. Other than the ability to assess minimal fees for certain services, which typically only cover a very small portion of the cost to deliver those essential services, municipalities have few other revenue generating options. Primarily, municipalities in West Virginia are permitted to impose Business and Occupation (“B&O”) taxes under W. Va. Code § 8-13-5 *et seq.* The rates, classifications and exemptions governing the application of B&O taxes were adopted for use by the State of West Virginia, not its municipalities, decades ago and have not been regularly updated to reflect the current economic environment and funding challenges facing many of the state’s municipalities. They also limit the source of funding and can negatively impact a municipality’s ability to attract and retain businesses within municipal borders.

In order to provide necessary revenue to fund its required duties and obligations, Charleston currently imposes B&O taxes at the maximum rates allowable by state law, which can be a detriment when recruiting businesses to locate within the city limits, or keeping business from relocating outside city limits. In some circumstances, businesses prefer to operate just outside the city limits giving the business access to the population and benefits/resources of the city, without having to pay the city’s

City of Charleston Home Rule Plan Proposed Amendment

B&O tax. In its original Home Rule Plan, Charleston requested and was granted flexibility to determine the rates, classifications and exemptions to its B&O tax structure. However, upon further consideration of potentially increasing the B&O tax rates Charleston determined that an increase in revenue gained by increasing the B&O rates or changing the B&O tax structure will likely come at the expense of economic development by placing an increased tax burden on existing businesses and inhibiting the location of new businesses within the city limits. Charleston examined lowering B&O tax rates on classifications of businesses as an incentive to develop new and/or retain existing business in Charleston, but the losses to revenue by doing so could not be sustained over the time it would take for the anticipated economic and financial benefits resulting from such expansion and development to be realized (with no promise that such growth will occur). Moreover, the loss of B&O tax revenue during such expansion and development period would have to be offset by raising B&O tax rates for certain other classifications thereby placing a disproportionate burden on those businesses.

Currently under W. Va. Code § 8-13C-4(a) (Pension Relief Municipal Sales Tax) and 8-13C-4(b) (Alternative Municipal Sales Tax), municipalities are allowed to impose a municipal sales and service tax and use tax (hereinafter collectively "consumer sales/use tax"), but only if, respectively, the police and fire pension funds are severely underfunded, in which case any revenue generated by the sales/use tax could only be applied toward the pension funds, or, alternatively, if the municipality intends to use the proceeds from a municipal consumer sales/use tax for any other purpose, it must forgo the imposition of all B&O taxes. A municipal consumer sales/use tax, even at the statutory maximum rate of one percent, will not generate enough revenue on its own to replace the approximately \$42 million in revenue generated by the collection of B&O taxes within the City of Charleston. A municipal consumer sales/use tax operating under current state statute is not a feasible revenue source for Charleston to be able to continue to provide services to its citizens and promote economic development in the Capital City.

Additionally, current State code affords municipalities certain other taxing authority, including the privilege to impose an amusement tax under W. Va. Code § 8-13-6 and a tax on liquors and private club fees under W. Va. Code § 8-13-7, and the ability to propose the imposition of a special district excise tax (an incremental sales tax TIF District tax) under W. Va. Code § 8-38-12. While Charleston currently imposes such an amusement tax, neither it nor any combination of the aforementioned taxes are capable of currently generating sufficient amounts of revenue to meet the financial obligations of the city or to fund the public improvements necessary for sustained economic growth, nor is Charleston able to meet the existing statutory requirements for creation of the financing program (sales tax TIF). Further, Charleston already collects a six percent (6%) hotel occupancy tax under W. Va. Code § 8-13-3, however, such hotel occupancy taxes now generates little more than Charleston's annual subsidy towards the Charleston Convention and Civic Center operating budget. Consequently, the prohibition under current law respecting the imposition of both a municipal consumer sales/use tax for non-pension uses and a B&O tax, prohibits Charleston's ability to carry out the City's duties and responsibilities in a cost-effective, efficient and timely manner for the benefit of its citizens.

Driving Charleston's proposal is an immediate need to undertake a major and essential improvement project to expand, improve and rehabilitate the Charleston Convention and Civic Center necessary for maintaining and growing the city's current convention and tourism business. The project involves the addition of sub-dividable ballroom and banquet space, increasing the number of meeting rooms, upgrading kitchen and serving facilities, improving energy efficiency and technology resources, and generally updating of appearance and programs to be competitive with state-of-the-industry standards. These improvements will draw more consumers to Charleston and the state through the

City of Charleston Home Rule Plan Proposed Amendment

enhanced ability to attract, service, and support new convention and tourism business. It is anticipated that the necessary improvements will cost between \$45 Million to \$65 Million. A Tax Incremental Financing (TIF) district has been established and is expected to generate revenues sufficient to cover \$6 Million of the total cost. The remaining project costs will require a new special revenue source for bond financing that contemplates debt service of between \$3 Million and \$3.5 Million annually over 20-30 years. Without a new source for such revenue, this project cannot proceed and Charleston will not be able to maintain its existing convention and tourism activity, let alone attract additional business to our city, state and region.

Charleston, the state's capital city and only remaining Class I municipality, needs to move forward with this project now in order to remain competitive and viable. Thus, the limitations under current state law not permitting a municipality to impose both B&O taxes and a municipal consumer sales/use tax do not afford Charleston the ability to formulate an equitable and balanced tax structure that raises sufficient operating revenues, promotes economic development and growth (through reduction, but not elimination, of existing B&O taxes), while raising additional revenues (through imposition of a new municipal consumer sales/use tax) to fund public improvements, including specifically the project noted above, necessary for continued growth and diversification of the city's economy.

Solution: The fiscal flexibility to reduce certain B&O rates while supplementing the revenue stream with a municipal consumer sales/use tax will facilitate essential economic development, without unduly burdening Charleston businesses.

The City of Charleston is proposing the enactment of a municipal consumer sales/use tax within the City of Charleston, while continuing to collect B&O taxes. Charleston is proposing that it be allowed to impose a municipal consumer sales/use tax, notwithstanding the current prohibitions to do so under W. Va. Code § 8-13C-4, while at the same time maintaining its current B&O tax, but with the fiscal flexibility to lower certain rates. Specifically, Charleston's request of the Board is to permit Charleston the privilege of imposing a municipal consumer sales/use tax within the city while it continues to impose, collect, administer, and enforce its B&O tax.

If Charleston's proposal is approved by the Board, it is Charleston's current intent to: 1) eliminate the B&O tax for businesses classified as Manufacturing, thereby removing any disincentives caused by the imposition of B&O tax to relocating or retaining manufacturing operations within Charleston's corporate limits, and 2) reduce the B&O tax rate for businesses classified as Retail from 0.5% to 0.35%, creating an incentive for these businesses to locate or remain within corporate limits. In addition to continuing to impose its B&O tax, it is Charleston's current intent to impose a 0.5% municipal consumer sales/use tax. It is Charleston's intent to establish the new municipal consumer sales/use tax as a special revenue source of the city for purposes of meeting debt service for Charleston bond debt service for the referenced Charleston Convention and Civic Center improvements, providing funds for other essential future economic development projects, and to be used to make up the general fund revenue lost due to the adjustment of the B&O tax rates for Retail, Manufacturing or other classifications. The nexus between the Charleston Convention and Civic Center improvement project and the economic impact of the additional convention and tourism dollars which the improvements will draw into Charleston, in addition to the economic development benefits provided by the fiscal flexibility

City of Charleston Home Rule Plan Proposed Amendment

to eliminate and reduce certain B&O taxes for certain classifications of businesses within the city, supports the public policy behind Charleston's proposal.

Specific Power Requested under Proposed Amendment to Charleston's Home Rule Plan

Charleston respectfully requests that it be granted the power under W. Va. Code § 8-1-5a to amend its approved Home Rule Plan to permit Charleston the privilege to impose a municipal consumer sales/use tax within the city without the restrictions imposed on municipalities under W. Va. Code § 8-13C-1 *et seq.* Charleston further requests such other powers deemed necessary to enact and implement the requested municipal consumer sales/use tax and as may be required to coordinate with the West Virginia State Tax Commissioner for the administration, enforcement and collection of the municipal consumer sales/use tax by the Tax Commissioner.

City of Charleston Home Rule Plan Proposed Amendment

Hearing Mandate Verification




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

I, the undersigned City Clerk of Charleston, do hereby certify that on April 1, 2013, at 7:00 pm. A Public Hearing was held during the regular meeting of the Charleston City Council, the subject of said hearing being Bill No. 7570 authorizing the submission of a proposed amendment to the City of Charleston Municipal Home Rule Plan consistent with W. Va. Code § 8-1-5a, Requesting approval to enact a municipal sales and service tax, and municipal use tax under the City's home rule powers.

The attached are true, correct and complete copies of page one of the Charleston City Council Agenda evidencing the Public Hearing, and the signatures of citizens who spoke either in favor of, or against Bill No. 7570.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of this City, this 10th day of April, 2013.


James M. Reishman
City Clerk

Seal

City of Charleston Home Rule Plan Proposed Amendment

AGENDA
CHARLESTON CITY COUNCIL
April 1, 2013
7:00 p.m.
REVISED

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC SPEAKERS

CLAIMS

PUBLIC HEARING - proposed amendment to the City of Charleston Municipal Home Rule Plan pursuant to W. Va. Code § 8-1-5a, requesting approval to enact a municipal consumer sales and service tax and use tax under the City's home rule powers.

MISCELLANEOUS RESOLUTIONS

TO READ AND DISPOSE OF COMMUNICATIONS

PLANNING COMMITTEE

1. Bill No. 7559, as amended – A Bill amending the Zoning Ordinance for the City of Charleston, West Virginia, adopted November 21, 2005 to allow for the adaptive reuse of nonresidential structures in residential zoning districts as a conditional use permit with restrictions.

2. Street Name Prezioso Place.

PARKS AND RECREATION COMMITTEE

1. Bill No. 7562—Authorizing Acceptance of a Parcel of Land in the East End for Establishing and Maintaining a Public Park and Playground (will be voted on under Finance)

FINANCE COMMITTEE

1. Resolution No. 280-13—Budget Amendment No. 9—Fiscal Year 2012-2013 (General Fund)

2. Resolution No. 281-13—Agreement with J P Morgan Chase Bank, N.A. for Standby Letter of Credit for Unsecured Workers' Compensation Liability

3. Resolution No. 282-13—Renewal of Irrevocable Letter of Credit for Landfill Bonding

City of Charleston Home Rule Plan Proposed Amendment

PUBLIC HEARING

April 1, 2013

Bill No. 7570 - A BILL authorizing the City of Charleston to submit to the Municipal Home Rule Board a proposed amendment to the City of Charleston Municipal Home Rule Plan consistent with W. Va. Code § 8-1-5a, requesting approval to enact a municipal sales and service tax, and municipal use tax under the City's home rule powers.

In favor of:

- 1.
- 2.
- 3.
- 4.
- 5.

Opposed to:

- 1.
- 2.
- 3.
- 4.
- 5.

Along

City of Charleston Home Rule Plan Proposed Amendment

Publication Mandate Verification



CHARLESTON NEWSPAPERS

P.O. Box 2993
 Charleston, West Virginia 25330
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LEGAL ADVERTISING INVOICE

INVOICE DATE	03/07/13
ACCOUNT NBR	055276001
SALES REP ID	0002
INVOICE NBR	839537001

M

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INVOICE DATE	03/07/13
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SALES REP ID	0002
INVOICE NBR	839537001

Legal pricing is based upon 63 words per column inch.

Each successive insertion is discounted by 25% of the first insertion rate.

The Daily Mail rate is \$.13 per word, the Charleston Gazette rate is \$.14 per word, and the Metro Putnam rate is \$.13 per word.

ISSUE DATE	AD TYPE	PUB	DESCRIPTION		AD NUMBER	AD SIZE	RATE	GROSS AMOUNT	NET AMOUNT
			REFERENCE NBR	PURCHASE ORDER #		TOTAL RUN			
02/27	LEGF	GZ		Public Hearing	0523930	1X0300			
			839537001			3.00	8.82	26.46	26.46
02/27	LEGF	DM		Public Hearing		1X0300			
			839537002			3.00	8.19	24.57	24.57
03/06	LEGR	GZ		Public Hearing		1X0300			
			839537003			3.00	8.82	26.46	
				LEGAL DISCOUNT 25%				6.62-	19.84
03/06	LEGR	DM		Public Hearing		1X0300			

State of West Virginia, **AFFIDAVIT OF PUBLICATION**

I, _____ of

do solemnly swear that the legal notice of:

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

Subscribed and sworn to before me this _____ day of _____.

City of Charleston Home Rule Plan Proposed Amendment



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 CHARLESTON WV 25330 USA

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 Classified 348-4848
 1-800-WVA-NEWS
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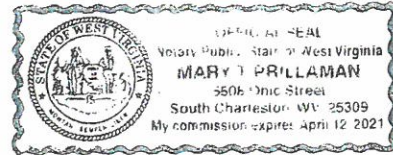
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ISSUE DATE	AD TYPE	PUB	DESCRIPTION		AD NUMBER	AD SIZE	RATE	GROSS AMOUNT	NET AMOUNT
			REFERENCE NBR	PURCHASE ORDER #		TOTAL RUN			
			839537004			3.00	8.19	24.57	
			LEGAL DISCOUNT 25%					6.14-	18.43
TOTAL INVOICE AMOUNT									89.30

State of West Virginia, AFFIDAVIT OF PUBLICATION

I, [Signature] of
 THE CHARLESTON GAZETTE,
 THE DAILY MAIL,
 do solemnly swear that the legal notice of:
 Public Hearing



was duly published in said newspaper(s) at the stated price for the respective newspaper(s) and during the dates listed below:
 02/27/13-03/06/13

Subscribed and sworn to before me this 8th day of March

[Signature]
 Notary Public of Kanawha County, West Virginia

**LEGAL
ADVERTISEMENT
PUBLIC HEARING**

Notice is hereby given that a Public Hearing will be held at the regular meeting of Charleston City Council, on Monday, April 1, 2013, at 7:00 p.m., in the Council Chamber, 3rd Floor, City Hall, Charleston, West Virginia, on a proposed amendment to the City of Charleston Municipal Home Rule Plan pursuant to W. Va. Code § 8-1-5a, requesting approval to enact a municipal consumer sales and service tax and use tax under the City's home rule powers.

Interested parties may appear at the Public Hearing and be heard with respect to the proposed amendment. A copy of the proposed amendment may be inspected in the City Clerk's Office beginning February 27, 2013, between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday.

(523930)

City of Charleston Home Rule Plan Proposed Amendment


Copy of Ordinance Authorizing Submission of Amendment



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

I, the undersigned City Clerk of Charleston, do hereby certify that the foregoing is a true, correct and complete copy of Bill 7570, enacted by the City Council of the City of Charleston on April, 15, 2013.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of the City, this 16 day of April, 2013.



James M. Reishman
City Clerk

Seal

City of Charleston Home Rule Plan Proposed Amendment

COMMITTEE REPORT

TO: Clerk of the Council of the City of Charleston, West Virginia

FROM: Select Committee on Municipal Home Rule

Your Committee on Home Rule

Has had under consideration:

Bill No. 7570 - A BILL authorizing the City of Charleston to submit to the Municipal Home Rule Board a proposed amendment to the City of Charleston Municipal Home Rule Plan consistent with W. Va. Code § 8-1-5a, requesting approval to enact a municipal sales and service tax, and municipal use tax under the City's home rule powers.

and reports the same to Council with the recommendation that the Bill do pass.

Bob R. I.
Sharon Lane
Christopher A. Alodnick
Mary Jean Davis
John Ware

Jack E. Harrison
Chairman
Andrew N. Richardson
Jan Murr
Casey Russell

City of Charleston Home Rule Plan Proposed Amendment

Bill No. 7570:

Introduced in Council:

April 1, 2013

Introduced by:

**Jack Harrison, Bobby Reishman
Tom Lane, Joe Deneault, Mary Jean
Davis, Andy Richardson, Marc Weintraub
Mike Clowser, Kasey Russell, Shannon
Snodgrass, Susie Salisbury, Ed Talkington,
Rick Burka, James Ealy, Mike Stajduhar,
Bill Kirk, Jerry Ware, Brent Burton**

Adopted by Council:

April 15, 2013

Referred to:

Home Rule Committee

1 **Bill No. 7570:** "A BILL authorizing the City of Charleston to submit to the Municipal
2 Home Rule Board a proposed amendment to the City of Charleston Municipal Home Rule
3 Plan consistent with W. Va. Code § 8-1-5a, requesting approval to enact a municipal sales
4 and service tax, and municipal use tax under the City's home rule powers;
5

6 **Now, therefore, be it Ordained by the Council of the City of Charleston, West**
7 **Virginia:**
8

9 That, on behalf of the City of Charleston, the Mayor and the City Administration are hereby
10 authorized and requested to submit to the Municipal Home Rule Board, in accordance with
11 the requirements of W. Va. Code § 8-1-5a and application guidelines of the Board, a
12 proposed amendment to the City of Charleston Municipal Home Rule Plan that is
13 consistent with Exhibit A attached hereto and to request approval by the Board of the Plan
14 amendment thereby allowing the City to adopt a municipal sales and service tax, and
15 municipal use tax under the City's home rule powers. The Mayor and the Administration
16 are further authorized to do all things reasonably necessary to obtain approval by the
17 Board of this Plan amendment.

City of Charleston Home Rule Plan Proposed Amendment

Exhibit A - Proposed Amendment

Introduction

In 2008, pursuant to the authority provided by W. Va. Code § 8-1-5a, the Municipal Home Rule Board (the “Board”) selected the City of Charleston (“Charleston”), along with three other municipalities, to participate in the West Virginia Home Rule Pilot Program and approved the original Home Rule Plan of Charleston. As evidenced by the Performance Evaluation and Research Division’s special report on the Municipal Home Rule Pilot Program, Charleston has successfully and responsibly exercised its powers under Home Rule and has, without challenge from either its City Council or citizenry, judiciously implemented its plan. Two of Charleston’s Board approved proposals have been implemented state wide, and three more of its proposals are now under consideration for state wide implementation.

Under W. Va. Code § 8-1-5a(f)(5), the Board has the power to authorize amendments to approved plans and has done so at the request of other participating municipalities. Until now, Charleston has not requested an amendment to its approved plan. For the reasons set forth herein, Charleston is now requesting that the Board authorize the following amendment to Charleston’s approved plan in the category of taxation.

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Currently under W. Va. Code § 8-13C-4(a) (Pension Relief Municipal Sales Tax) and 8-13C-4(b) (Alternative Municipal Sales Tax), municipalities are allowed to impose a municipal sales and service tax and use tax (hereinafter collectively "consumer sales/use tax"), but only if, respectively, the police and fire pension funds are severely underfunded, in which case any revenue generated by the sales/use tax could only be applied toward the pension funds, or, alternatively, if the municipality intends to use the proceeds from a municipal consumer sales/use tax for any other purpose, it must forgo the imposition of all B&O taxes. A municipal consumer sales/use tax, even at the statutory maximum rate of one percent, will not generate enough revenue on its own to replace the approximately \$42 million in revenue generated by the collection of B&O taxes within the City of Charleston. A municipal consumer sales/use tax operating under current state statute is not a feasible revenue source for Charleston to be able to continue to provide services to its citizens and promote economic development in the Capital City.

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City of Charleston Home Rule Plan Proposed Amendment

and generally updating of appearance and programs to be competitive with state-of-the-industry standards. These improvements will draw more consumers to Charleston and the state through the enhanced ability to attract, service, and support new convention and tourism business. It is anticipated that the necessary improvements will cost between \$45 Million to \$65 Million. A Tax Incremental Financing (TIF) district has been established and is expected to generate revenues sufficient to cover \$6 Million of the total cost. The remaining project costs will require a new special revenue source for bond financing that contemplates debt service of between \$3 Million and \$3.5 Million annually over 20-30 years. Without a new source for such revenue, this project cannot proceed and Charleston will not be able to maintain its existing convention and tourism activity, let alone attract additional business to our city, state and region.

Charleston, the state's capital city and only remaining Class I municipality, needs to move forward with this project now in order to remain competitive and viable. Thus, the limitations under current state law not permitting a municipality to impose both B&O taxes and a municipal consumer sales/use tax do not afford Charleston the ability to formulate an equitable and balanced tax structure that raises sufficient operating revenues, promotes economic development and growth (through reduction, but not elimination, of existing B&O taxes), while raising additional revenues (through imposition of a new municipal consumer sales/use tax) to fund public improvements, including specifically the project noted above, necessary for continued growth and diversification of the city's economy.

Solution: The fiscal flexibility to reduce certain B&O rates while supplementing the revenue stream with a municipal consumer sales/use tax will facilitate essential economic development, without unduly burdening Charleston businesses.

The City of Charleston is proposing the enactment of a municipal consumer sales/use tax within the City of Charleston, while continuing to collect B&O taxes. Charleston is proposing that it be allowed to impose a municipal consumer sales/use tax, notwithstanding the current prohibitions to do so under W. Va. Code § 8-13C-4, while at the same time maintaining its current B&O tax, but with the fiscal flexibility to lower certain rates. Specifically, Charleston's request of the Board is to permit Charleston the privilege of imposing a municipal consumer sales/use tax within the city while it continues to impose, collect, administer, and enforce its B&O tax.

If Charleston's proposal is approved by the Board, it is Charleston's current intent to: 1) eliminate the B&O tax for businesses classified as Manufacturing, thereby removing any disincentives caused by the imposition of B&O tax to relocating or retaining manufacturing operations within Charleston's corporate limits, and 2) reduce the B&O tax rate for businesses classified as Retail from 0.5% to 0.35%, creating an incentive for these businesses to locate or remain within corporate limits. In addition to continuing to impose its B&O tax, it is Charleston's current intent to impose a 0.5% municipal consumer sales/use tax. It is Charleston's intent to establish the new municipal consumer sales/use tax as a special revenue source of the city for purposes of meeting debt service for Charleston bond debt service for the referenced Charleston Convention and Civic Center improvements, providing funds for other essential future economic development projects, and to be used to make up the general fund revenue lost due to the adjustment of the B&O tax rates for Retail, Manufacturing or other classifications. The nexus between the Charleston Convention and Civic Center improvement project and the economic impact of the additional convention and tourism dollars which the improvements will

City of Charleston Home Rule Plan Proposed Amendment

draw into Charleston, in addition to the economic development benefits provided by the fiscal flexibility to eliminate and reduce certain B&O taxes for certain classifications of businesses within the city, supports the public policy behind Charleston's proposal.

Specific Power Requested under Proposed Amendment to Charleston's Home Rule Plan

Charleston respectfully requests that it be granted the power under W. Va. Code § 8-1-5a to amend its approved Home Rule Plan to permit Charleston the privilege to impose a municipal consumer sales/use tax within the city without the restrictions imposed on municipalities under W. Va. Code § 8-13C-1 *et seq.* Charleston further requests such other powers deemed necessary to enact and implement the requested municipal consumer sales/use tax and as may be required to coordinate with the West Virginia State Tax Commissioner for the administration, enforcement and collection of the municipal consumer sales/use tax by the Tax Commissioner.

City of Charleston Home Rule Plan Proposed Amendment

Projected Fiscal Impact/Feasibility

Projected Fiscal Impact

Lost Economic Opportunity

In the last five years, the City of Charleston has lost the opportunity to be the location of numerous national, regional and state meetings simply because meeting facilities at the Charleston Civic Center did not satisfy the criteria necessary for those meetings to be held in Charleston. The Charleston Convention and Visitor's Bureau projects that over 36,000 would have attended those meetings and that had the meetings been held in Charleston, approximately \$28 million would have been injected into the Charleston economy. These numbers are based on known missed opportunities. Not known is the number of conventions and meetings that were not held in Charleston simply because Charleston did not have the facilities for Charleston to be considered in the first place.

Projected B&O Tax Impact

The fiscal impact of the B&O tax initiatives Charleston currently intends to pursue will result in an estimated B&O tax loss of \$2.6 million annually. Charleston used a five year average gross sales for the Manufacturing classification reported in B&O tax filings. Applying the current B&O tax rate of .35% for Manufacturing to this average, elimination of the estimated annual B&O tax for the Manufacturing classification would result in an annual loss of approximately \$350,000.00.

Similarly, Charleston used a five year average for gross sales reported for the Retail classification in B&O tax filings. This average produced estimated retail base sales of \$1.5 billion annually. Applying the current 0.5% Retail tax rate to the average gross sales results in \$7.5 million. By reducing the Retail tax rate to 0.35%, the estimated tax becomes \$5.25 million, representing a loss of \$2.25 million in the Retail tax classification annually. This represents a total estimated B&O tax loss of \$2.6 million annually.

B&O Tax Initiatives

Eliminate B&O on Manufacturing	(350,000)
Reduce B&O on Retail from .5% to .35%	<u>(2,250,000)</u>
Estimated B&O Tax Loss	\$ (2,600,000)

Projected Municipal Consumer Sales/Use Tax Impact

The base fiscal impact of the municipal consumer sales/use tax is estimated to be more than \$6 million in revenue per year to Charleston once the tax is in effect for a full calendar year. Based on information and belief, the West Virginia State Department of Revenue is currently unable to provide detailed data regarding retail sales tax receipts for the retail tax base in Charleston or Kanawha County. In order to estimate the impact of a municipal sales/use tax, Charleston estimated retail base sales by examining the gross sales reported to Charleston in the Retail classification under its B&O taxes over the

City of Charleston Home Rule Plan Proposed Amendment

past five years, which produced estimated retail base sales of \$1.5 billion annually. The proposed tax rate of 0.5% applied to the estimated retail base sales represents an estimated \$7.5 million in revenue. Adjustments were made to this number for the exemption of automotive and food sales, leaving an estimated 6.175 million in revenue annually.

Sales/Use Tax Initiative

Implement 0.5% Sales/Use Tax	7,500,000
Less: Automobile Exemptions	(625,000)
Less: Food Exemption	<u>(700,000)</u>
Estimated Sales/Use Tax Revenue	\$ 6,175,000
(based on a full year of implementation)	

Net Revenue Impact

The estimated net revenue to Charleston resulting from the \$2.6 million dollar estimated loss due to the intended reduction of certain B&O tax rates and the \$6.175 million estimated revenue from the municipal consumer sales/use tax would be an estimated \$3.575 million annually.

Net Revenue Impact

Estimated B&O Credit Implementation	(2,600,000)
Estimated Sales/Use Tax Revenue	<u>6,175,000</u>
Estimated Sales/Use Tax Revenue	\$ 3,575,000

Administrative Processing

The mechanism by which a municipal consumer sales/use tax is administered is established in W. Va. §§ 8-13C-6, 8-13C-7, 11-15B-33, 11-15B-34 and 11-15B-35, with the State Tax Commissioner acting as the administrative, collecting, and enforcing agency. Currently three municipalities, Huntington, Rupert and Williamstown, impose a 1% municipal consumer sales/use tax. Williamstown's tax has been in effect since October 1, 2011. Huntington's tax became effective January 1, 2012, and Rupert's tax became effective April 1, 2013. Thus the State Tax Commissioner has had experience executing the provisions of the state code regarding the administration, collection and remittance to a city of that city's municipal consumer sales/use tax. Charleston has communicated with the State Tax Commissioner to review the administrative process and the fee for collection that the State Tax Commissioner's office will retain, and to become familiar with the rules and requirements under which a municipal consumer sales/use tax can be implemented and administered. Charleston intends to cooperate with the State Tax Commissioner and his staff throughout the implementation, administration and collection of the municipal consumer sales/use tax. It is also contemplated that the cooperation and sharing of information between Charleston and the State will ultimately result in increased revenue for both.

City of Charleston Home Rule Plan Proposed Amendment

Attorney Opinions



OFFICE OF THE CITY ATTORNEY

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

Paul D. Ellis
City Attorney of Charleston

Date: **April 16, 2013**

Applicant: **CITY OF CHARLESTON, WEST VIRGINIA**

Re: City of Charleston Municipal Home Rule Proposal Amendment

Ladies and Gentlemen:

As City Attorney the City of Charleston, I have reviewed West Virginia Code §8-1-5a (2007), Municipal Home Rule Pilot Program Application Guidelines (rev. November 2, 2007), City of Charleston 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;
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.

Sincerely,

Paul D. Ellis
City Attorney of Charleston

PDE/sde

City of Charleston Home Rule Plan Proposed Amendment



Brian C. Helmick
304.340.3826
e-mail: bhelmick@spilmanlaw.com

Dale W. Steager
304.340.1692
e-mail: dsteager@spilmanlaw.com

April 15, 2013

The Honorable Patsy Trecoast II, Chair
Municipal Home Rule Board
c/o West Virginia Development Office
Building 6, Room 553
State Capital Complex
1900 Kanawha Boulevard, East
Charleston, WV 25305-0311

Re: Constitutionality of the City of Charleston's proposed Home Rule Plan Amendment

Dear Chair Trecoast:

Spilman Thomas & Battle, PLLC was asked by the City of Charleston, West Virginia, to write to the Municipal Home Rule Board regarding the proposal by the City to amend its Home Rule Plan for the purpose of imposing sales and use taxes that would be levied on the same tax base upon which the State consumers sales and use taxes are imposed that are deposited in the State General Revenue Fund, and which would be administered and collected by the State Tax Commissioner.

As you are aware, municipal corporations have no inherent authority to impose a sales tax or a use tax. "The taxing power of a municipality depends upon legislative authority, expressed or necessarily implied." Syllabus point, *The Anderson-Newcomb Co. v. The City Of Huntington.*, 117 W. Va. 716, 188 S.E. 118 (1936).

Nothing in article 13, chapter 8 of code of West Virginia of 1931, as amended, which relates generally to municipal taxation and finance, authorizes municipal corporations to impose a sales and service tax or a use tax. The Legislature has authorized municipal corporations, in W. Va. Code § 8-13C-4, to impose sales and use taxes subject to restrictions that make it fiscally impossible for the City of Charleston to impose municipal sales and use taxes under that section. Because of these burdensome restrictions, the City has asked this Board to approve an amendment to its previously approved Home Rule Plan that would allow the City to impose municipal sales and use taxes without the restrictions in W. Va. Code § 8-13C-1 *et seq.*

Spilman Center 300 Kanawha Boulevard, East Post Office Box 273 Charleston, West Virginia 25321-0273
www.spilmanlaw.com 304.340.3800 304.340.3801 fax

West Virginia North Carolina Pennsylvania Virginia

City of Charleston Home Rule Plan Proposed Amendment



The Honorable Patsy Trecoast II, Chair
Municipal Home Rule Board
April 15, 2013
Page 2 of 2

Pursuant to W. Va. Code § 8-1-5a (2007), a pilot plan municipality, such as the City of Charleston, shall have “(1) the authority to pass any ordinances . . . not contrary to the constitutions of the United States or West Virginia, federal law or chapters sixty-a, sixty-one and sixty-two of this code as specified in their written and approved plans: *Provided*, That the pilot municipalities may not adopt any ordinance, rule, regulation or resolution or take any action that would create a defined contribution employee pension or retirement plan for its employees currently covered by a defined benefit pensions plan;” and (2) shall have “[a]ny other powers necessary to implement the provisions of its approved plan.” W. Va. Code § 8-1-5a(j)(1) and (2).

We have reviewed the City of Charleston’s Home Rule Plan Amendment and believe the City has complied with the various requirements set forth in W. Va. Code § 8-1-5a (2007) that the City must satisfy as a condition precedent to submission of its Home Rule Plan Amendment to the Board as provided in W. Va. Code § 8-1-5a. We have also reviewed the latest drafts of ordinances that the City intends to adopt after its Home Rule Plan amendment is approved by the Board.

It is our opinion and belief that the City of Charleston’s proposed amendment to its Home Rule Plan is constitutional and that it does not violate the provisions of W. Va. Code § 8-1-5a (2007). The plan amendment and the proposed sales and use tax are not contrary to (1) the Constitution of the United States or any other federal law, (2) the Constitution of this State, or (3) chapters 60A, 61 and 62 of the Code of West Virginia. Additionally, the City is not proposing to adopt any ordinance, rule, regulation or resolution, or take any other action that would create a defined contribution employee pension plan or retirement plan for its employees currently covered by a defined benefit plan.

Please let us know if you have any questions regarding this letter or if we may be of further service to the Board.

Spilman Thomas & Battle, PLLC

A handwritten signature in blue ink that reads "Brian Helmick".

Brian C. Helmick (State Bar I.D. No. 8815)
Dale W. Steager (State Bar I.D. No. 3581)

BCH/DWS/ljr
4689077 (477.326)