

**CITY OF CHARLESTON**

**MUNICIPAL HOME RULE  
PILOT PROGRAM  
APPLICATION**

CITY OF CHARLESTON  
OFFICE OF THE MAYOR

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December 19, 2007

West Virginia Home Rule Pilot Program  
West Virginia Department of Commerce  
State Capitol Complex  
Building 6, Room 525  
Charleston, West Virginia 25303

Dear Members of the Home Rule Pilot Program Committee,

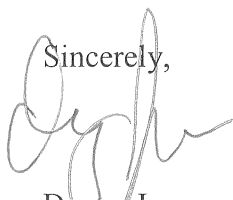
On behalf of the citizens and elected leaders of Charleston, I thank you for your consideration of our city's application to participate in the pilot program for home rule. This is an exciting new approach for our state that recognizes the strong and close connection between municipal governments and the people they serve in cities throughout West Virginia. In Charleston, we have done our level best to model a responsible approach to this application as a way to demonstrate that home rule will make a positive difference on the lives of people who live, work and invest in our city.

Indeed, government is most responsive and responsible when it is closest to the people it serves. With council members who represent 21 wards, six more who represent our at-large population and a mayor who is accessible and approachable throughout our city, the elected leaders of Charleston know that we have closer and more frequent contact with our constituents than elected officials in other levels of government. As such, we also know that our constituents can, will and do respond decisively and effectively any time we fail to represent them in a responsive and responsible way. Make no mistake, our citizens take full advantage of their regular and close contact with their representatives on City Council. As a result, we have extensive community-wide buy-in to and involvement with many projects and initiatives we undertake to bring progress to our city.

In the pages that follow, you will learn more about the areas of governance and self determination where we think added responsibilities at our city government level can produce positive change in our efforts to improve the quality of life in West Virginia's capital city. We recognize that, as you give us the ability to move forward, we do so with a commitment to wide open and honest discussions about every issue included before any changes might be made. As several media reports have demonstrated, Charleston's application process itself produced a lot of public discussion on a wide range of issues before our City Council drafted the proposal before you.

Thanks again for your role in making government more effective and responsive. If I can provide any additional insights about this application or the City's plans to use this opportunity for positive results in Charleston, please do not hesitate to contact me.

Sincerely,



Danny Jones  
Mayor

# West Virginia Municipal Home Rule Pilot Program Application

PLEASE TYPE OR PRINT- Application Due by 1-1-2008

## SECTION I: APPLICANT INFORMATION

### A. General Information

Name of Municipality: City of Charleston

Certifying Official: Danny Jones Title: Mayor

Contact Person: David Molgaard Title: City Manager

Address: P.O. Box 2749

City, State, Zip: Charleston, WV 25330

Telephone Number: (304) 348-8014 Fax Number: (304) 348-8157

E-Mail Address: David.Molgaard@cityofcharleston.org

2000 Census Population: 53,421

### B. Municipal Classification

Please identify municipal class/metro government: (Check one)

Class I     Class II     Class III     Metro-Government

### C. Category of Issues to be Addressed

Please identify areas to be addressed through home rule: (Check all that apply)

Taxing     Organization     Administrative     Personnel

(Please describe-attach additional pages if necessary):

Please see attached summary.

\_\_\_\_\_

\_\_\_\_\_

### *C. Category of Issues to be Addressed*

1. Delinquent Fees (Administrative)
  - (a) Hold hearings at the city level to facilitate collection of delinquent fees owed to the City with a right of appeal to the court system.
  - (b) Allow City/CSB to lien against property owned by person/entity owing delinquent fees for City/CSB services without the necessity of obtaining a court order.
  - (c) Publication of delinquent accounts.
2. Deer Problem (Administrative) – Authorize urban bow hunting programs to control deer without regard to DNR restriction on time for the hunting and the number of deer that can be harvested without reducing a hunter’s statewide “bag” limit.
3. “Eyesores” and Dilapidated Structures (Administrative) - Make needed repairs to “eye sores”, dilapidated structures/property and sidewalks with the cost of repairs becoming a lien on the property.
4. Procurement of Architect-Engineering Services (Administrative) – Modify procedure for procurement of architect engineering services for projects over \$250k to allow for RFP process.
5. B&O Taxing Authority (Taxing) – Permit City to determine rates, classifications and exemptions for B&O taxes.
6. Building and Zoning Administration Enforcement Provisions (Administrative) – Permit zoning and building administrators and/or City law enforcement officers to issue “on the spot” citations for exterior sanitation/common nuisance violations.
7. Relief from DNR “Per Project” Permitting (Administrative) – Relief from duplicative permitting process with respect to cleaning and dredging City waterways.
8. Relief from DEP “Per Load” Testing Costs and Permitting (Administrative) – Issue City annual permit for dumping loads of waste generated by similar activity, and allow City to contract its own testing source.

9. Disposition of City Property (Administrative) – Allow conveyance or lease of buildings or land to non-profit organizations providing services to the public that the City could otherwise provide.
10. Relief from Municipal Juror Number Requirements. THIS PROPOSED PROVISION HAS BEEN DELETED. See Attorney Opinion, Exhibit F to Municipal Home Rule Pilot Program Application.
11. Relief from Design-Build Procurement Act Requirements (Administrative) – Allow City to determine method of conveyance for construction projects without State Design-Build Board oversight.
12. Allow Contracts with Other Jurisdictions via Resolution (Administrative) – Streamline process for contracting with other jurisdictions.
13. Municipal Healthcare Provider Tax (Taxing) – Allow adoption of municipal health care provider tax on providers of inpatient hospital services.

## CITY OF CHARLESTON MUNICIPAL HOME RULE PLAN

**PREAMBLE.** The following proposed Municipal Home Rule Plan lists additional powers for the City of Charleston (the “City”) which will, if approved, enhance and improve the ability of the City to meet its present and future obligations. Provided the City is granted these additional powers, it will have the opportunity to improve its management, provision of services and the quality of life of its citizenry, and will further promote growth and prestige of our state.

**THE PLAN.** Pursuant to W. Va. Code § 5a, Article 1, Chapter 8, the City hereby proposes the following Municipal Home Rule plan:

1. **Delinquent Fees.** (Administrative) Presently, the City’s only remedy for collecting delinquent fees under West Virginia Code § 8-13-13 and § 8-13-15 is instituting a civil action in a court of competent jurisdiction. Currently, West Virginia Code § 8-13-13 precludes municipalities from attaching a lien on property as security for unpaid fees. This results in expensive proceedings in either Magistrate or Circuit Court, often to collect amounts which do not justify the filing fees involved. It is proposed that the City be given the power and authority to hold and conduct hearings at the City level in a manner similar to the authority which a municipality presently has to collect delinquent business and occupation taxes. The affected person or business would be entitled to appeal the decision by the municipality to Circuit Court. Once the decision by the City becomes final, the City would be authorized to file and record a lien against the judgment debtor with the county clerk.

In addition, W.Va. Code § 11-10-5d and case law interpreting this section currently prohibit the disclosure of any information received by the City Collector in connection with B&O taxes and arguably city service fees. Consistent with Kanawha County's long-standing practice of publishing delinquent real and personal property tax information, the City would like to be able to publish, in the medium of its choice, very limited information, specifically name, tax year(s) and amount(s) owed, for persons or businesses with delinquent B&O taxes or city service fees. The County's publication assists in the collection of its delinquent taxes, and the City would like to employ the same tool to assist in its collection efforts.

The City currently has in excess of \$2 million in delinquent fees. The City estimates that, if it is permitted to implement the collection procedures outlined above, its collections of such fees would increase by approximately thirty to thirty-five percent, thereby generating approximately \$600,000 to \$700,000 in additional revenue. See, Fiscal Impact Worksheet included in Section III, D.

2. Deer Problem. (Administrative) Presently, municipalities are authorized to use urban bow hunting programs in an attempt to control the presence of deer within city limits. However, that program is limited both in time of the season and number of deer that can be harvested without reducing a hunter's statewide "bag limit." See, CSR § 58-45-3.3. It is proposed that the City be given the power and authority to conduct an urban bow hunting program without regard to time limitations and with no limit unless imposed by the City on the number of deer that can be harvested without reducing a hunter's "bag limit."

3. “Eyesores” and Dilapidated Structures. (Administrative) Current state law, W.Va. Code § 8-12-16, only allows municipalities to “adopt ordinances regulating the repair, alteration, or the vacating and closing or removal or demolition . . . of any dwellings or other buildings unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions . . . which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare.” This does not allow municipalities to address problems with property maintenance that detract from the neighborhood or constitute eyesores but do not yet constitute a threat to public safety. Additionally, West Virginia Code § 8-12-16 limits the lien amounts municipalities may assess for repairing or demolishing a structure to the assessed value of the property.

Further, the City, through City Code §102-52, delegates the duty to maintain sidewalks to abutting property owners and establishes a process by which the City may, after proper notice to the property owner, repair sidewalks that are out of good order and assess the abutting property owner with the cost of the repairs and, if necessary, place a lien on the property to secure re-payment of the repair costs. However, there is no clear authority under West Virginia law for the City’s ability to attach a lien to the property absent obtaining court judgment, and it is possible that W. Va. Code § 8-13-13 may prohibit the City from attaching a lien for sidewalk repairs.

Thus, it is proposed that the City be given the power and authority, after due notice to the owner or owners of property which is not being properly maintained, to enter the property and to repair, alter or demolish the property, and/or to mow unkempt



grass to ensure that the property does not detract from the neighborhood and deteriorate further. The cost of that rehabilitation would constitute a lien against the property without the necessity of obtaining a court order. Additionally, the City proposes that it be permitted, if necessary, to attach a lien without first obtaining a court order in those situations in which the City has repaired a sidewalk after following the notice and steps outlined in City Code § 102-52.

4. Procurement of Architect-Engineering Services. (Administrative) Present state law regarding the City's procurement of design contractors requires the selection process be conducted in two parts: (1) a committee must select the top three most highly qualified firms and (2) negotiate price for the contract. W.Va. Code § 5G-1-3. If negotiations with the most qualified firm do not result in a satisfactory contract, then the committee moves to the second most qualified firm and negotiations begin again with the new firm. In order to streamline the process and allow the City to select the "best value" for all projects, the City, under Home Rule, proposes to instead follow a selection process similar to federal Housing and Urban Development regulations under 24 CFR 85.36(d)(3). This selection process would permit the City to issue a Request for Proposal and then select the proposal that provides the best value by taking into consideration the price, qualifications and all other factors material to the project.

5. B&O taxing authority. (Taxing) Presently, the City is limited by W.Va. Code § 8-13-5 and related laws in tax classifications, exemptions and maximum rates related to the City's imposition of B&O taxes. The current maximum rates were set by the state in 1959 and no longer reflect current economic conditions. Similarly, the current mandatory classifications and exemptions under state law were adopted and modified by the state

between approximately 1921 and 1987, are antiquated, and restrict the City's ability to generate necessary financial resources in a manner that is consistent with current economic conditions. The City proposes that it be permitted the flexibility to determine rates, classifications and exemptions with regard to its B&O tax structure so long as those determinations are consistent with local needs and reasonable economic policies; except that no B&O Tax will be imposed on any insurance company, or any non-profit company or other charitable, religious or fraternal organization which is currently exempt under WV Code 11-13-3 or 11-24-5(b) or under 110 CSR series 16 Sec 3.

6. Building and Zoning Administration Enforcement Provisions. (Administrative)

Presently, there is no clear authority under state law that would permit building and zoning administrators or City law enforcement officers to issue "on the spot" citations for external sanitation violations or common nuisances. Additionally, W.Va. Code § 8-12-16 mandates certain procedural and notice requirements including a requirement that, "[a]ll orders issued by the enforcement agency shall be served in accordance with the law of this state concerning the service of process in civil actions" and a requirement that such orders "be posted in a conspicuous place on the premises affected by the complaint or order . . . ." Further, W.Va. Code § 8-12-16(d) currently mandates that "no ordinance shall be adopted without providing therein for the right to apply to the circuit court for a temporary injunction restraining the enforcement agency pending final disposition of the cause." Currently, building and zoning administrators issue citations only after application to and approval by the Municipal Court. The process of successfully prosecuting a building or zoning violation may take a month or more, and fosters recidivism from violators who will correct violations to get a case dismissed, then re-

offend, knowing the prosecution clock will start anew. It is proposed that building and zoning administrators and/or City law enforcement officers be given power to issue citations for reoccurring exterior sanitation/common nuisance violations (including, but not limited to, trash/rubbish, overgrown weeds/grass, junked or otherwise unlawfully situated motor vehicles, maintenance of vacant structures, broken windows or glass, failure to maintain sidewalks and driveways) at the site of the violation and at the time the violation is recognized, similar to the manner in which traffic citations are issued.

7. Relief from Division of Natural Resources (“DNR”) “per project” permitting. (Administrative) Under current law and Department of Natural Resources regulations, Charleston is required to obtain a permit to clean and dredge perennial and intermittent streams within City limits for every individual project undertaken by the City. This requirement is duplicative of federal Clean Water Act requirements. Section 404 of the Act requires a separate permit to dredge or fill material in surface waters; such permit programs are administered by the United States Army Corps of Engineers and the United States Army Corps of Engineers exercises primary jurisdiction over the control of such waterways. 33 U.S.C. §§ 1251 et seq. As such, obtaining State approval for the same dredging or filling activity can delay the project, leaving City residents who live along City waterways without timely relief. This proposal allows the City to obtain approval for dredge and fill activities in surface waters within City limits only from the United States Army Corps of Engineers in order to provide timely relief from unsightly or dangerous conditions within the City.

8. Relief from “per load” Department of Environmental Protection (“DEP”) Testing Costs and Permitting. (Administrative) Under current state law and DEP

regulations, the City pays for DEP testing of, and is required to obtain solid waste permits for loads of material (including dirt) bound for landfills on a “per load” basis. As time-frames for granting permits and the number of permits needed throughout the year may vary, this causes problems from both a project planning and budgeting perspective. Commercial enterprises are allowed an annual permit with a tonnage limit, provided that the loads consistently contain the same material and are disposed of in the same facility. It is proposed that the City also be allowed annual permits for recurring loads of waste generated by similar activity. For example, loads of dirt from residential lot clean-up or grading would be covered under an annual permit, and disposing of such loads would not incur the delay of having to wait for individual permits. With respect to testing requirements, Home Rule cannot exempt operators of solid waste disposal facilities of their obligations under W. Va. Code § 22-15-1 et seq. and associated federal and state laws to insure that unsuitable waste types are not being put in their facilities. The City proposes that it be allowed to contract with a private DEP certified laboratory for a flat yearly fee to complete and certify the testing of each load to the standards of the DEP. Copies of the test results would be kept on file, and provided to the solid waste facility operator and the DEP upon request. Any load in which testing indicated a variance from the waste allowed under the annual permit would then be submitted for an individual permit. This would allow the facility to maintain its environmental standards, while allowing the City to more accurately budget for testing costs, and schedule projects without the variable of waiting for individual permits for every load.

9. Disposition of City Property. (Administrative) Under § 8-12-18 of the W.Va. Code, the City must convey or lease for fair market value, buildings or land to

non-profit organizations providing services that benefit the citizens of the City. Such sale may create a financial burden for the non-profit, and by leasing such property to these organizations, the City retains liability inherent therein. It is proposed that the City be allowed to lease or convey (without auction) for less than fair market value buildings and land to non-profit organizations who are providing services to the public, that, in their absence, the City itself might have to finance or administer; provided that a test similar to that imposed by W.Va. Code § 1-5-3 is met and that ownership of the land or building would revert to the City in the event the non-profit ceased to provide such services to the public consistent with § 8-32-1.

Additionally, W.Va. Code § 8-12-18(b) mandates that municipalities hold public auctions for the sale of all real and personal property worth in excess of one thousand dollars (\$1,000.00) and announce such auction in a Class II legal advertisement. When the primary purpose is to facilitate economic development within the City and/or the availability of necessary or convenient resources for the benefit of its citizenry, the City proposes that it be permitted to convey real and/or personal property with a value in excess of one thousand dollars (\$1,000.00) for fair market value without having to follow the auction procedures outlined in W.Va. Code § 8-12-18(b). This would avoid costly and time consuming auction procedures and the possibility that the City would be precluded from conveying property for the desired use in a situation where the primary goal is to facilitate economic growth and/or to make available necessary and convenient resources for the benefit of Charleston and its residents.

10. Relief from Municipal Juror Number Requirements. THIS PROPOSED PROVISION HAS BEEN DELETED. *See* Attorney Opinion, Exhibit F to Municipal Home Rule Pilot Program Application.

11. Relief from Design-Build Procurement Act requirements. (Administrative)  
The City finds that the requirements of the Design-Build Procurement Act, W.Va. Code § 5-22A et seq., are unduly burdensome to the development and completion of City projects. The City finds that the process for design-build projects: Design-Build Board approval of the project, invitation for qualifications, identification of the three most qualified design-builders, the invitation for proposals, review of the technical submission and the cost submission, and final acceptance; may delay projects, and that the process may not produce the desired result of the best combination of design-builder and cost. In order to streamline the process and allow the City to select the “best value” proposal, it is proposed that these projects be awarded through an RFP process, consistent with federal guidelines published in 24 CFR 85.36(d)(3)(iv) which reads, “Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.”

12. Allow contracts with other jurisdictions via Resolution. (Administrative)  
Under W.Va. Code § 8-11-3(10), the City cannot enter into a contractual or other agreement with another jurisdiction until Council approves the transaction by ordinance. Currently, due to state law requirements regarding the passage of an ordinance, *See* W. Va. Code § 8-11-4, it takes approximately one month for Council to approve a contract or other agreement with another jurisdiction. In order to promote and facilitate cooperation between jurisdictions and to expedite the process of entering into a contract or other

agreement with another governmental entity, the City proposes that it be allowed to approve these contracts or other agreements by resolution in the same manner as it does with similar agreements with non-governmental entities.

13. Municipal Healthcare Provider Tax. (Taxing) Currently, state law provides for state imposition of a health care provider tax consistent with W.Va. Code Section 11-27-1 et seq. The City requests that it be permitted to adopt and collect a similar health care provider tax on providers of inpatient hospital services, or on providers of outpatient hospital services, or on providers of both services, at a rate of tax not to exceed that permitted under federal law and to transfer all or a portion thereof to the state to be used as the non-federal share of enhanced Medicaid reimbursement rates to City of Charleston Hospitals, thereby ensuring economy, efficiency and quality of care within the City.

Contingent upon the Bureau of Medical Services obtaining a State Plan Amendment (SPA), the City of Charleston requests, through Home Rule, that it be permitted to establish a hospital provider tax for the purpose of increasing the amount of Medicaid matching funds available to Charleston Hospitals. The tax would be made contingent upon Centers of Medicare and Medicaid Services (CMS) approval of the enhanced reimbursement. Once collected, the City would transfer all the proceeds of the tax to the Bureau for Medical Services (BMS) within the Department of Health and Human Resources, the state's Medicaid agency. BMS would then use the tax funds as the non-federal share of enhanced reimbursement to Charleston hospitals.

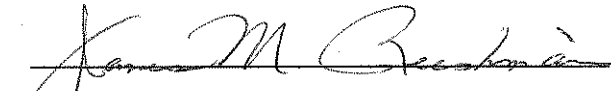


**City of Charleston**  
**Office of the City Clerk**  
**P. O. Box 2749**  
**Charleston, WV 25330**  
**(304) 348-8179**

I, the undersigned City Clerk of Charleston, do hereby certify that on December 17, 2007, 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. 7313 authorizing the submission of a proposed City of Charleston Municipal Home Rule Plan.

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. 7313.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of this City, this 19<sup>th</sup> day of December, 2007.

  
James M. Reishman  
City Clerk

Seal



**AGENDA  
CHARLESTON CITY COUNCIL  
DECEMBER 17, 2007**

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC SPEAKERS

CLAIMS

PUBLIC HEARING-

Bill No.7313: A BILL authorizing the submission of a proposed City of Charleston Municipal Home Rule Plan, attached as an Exhibit hereto, to the Municipal Home Rule Board consistent with W. Va. Code § 8-1-5a, in order to be considered for participation in the West Virginia Home Rule Pilot Program.

TO READ AND DISPOSE OF COMMUNICATIONS

TO READ AND DISPOSE OF MISCELLANEOUS RESOLUTIONS

TO READ AND DISPOSE OF STANDING COMMITTEES

**Municipal Home Rule**

1. Bill No.7313: A BILL authorizing the submission of a proposed City of Charleston Municipal Home Rule Plan, attached as an Exhibit hereto, to the Municipal Home Rule Board consistent with W. Va. Code § 8-1-5a, in order to be considered for participation in the West Virginia Home Rule Pilot Program.

**Ordinance and Rules**

1. Bill No. 7308: A BILL to amend § 2-551(a) of Article VII of Chapter 2 of the code of the City of Charleston, to create an additional Civic Center - Auditorium Board seat.

**Planning**

1. Bill 7264- A Bill repealing the floodplain and stormwater management provisions from Article 24 of the Zoning Ordinance of the City of Charleston, West Virginia, adopted November 21, 2005, as amended, and adding the floodplain management provisions to Chapter 91, Article II of the Code of the City of Charleston, West Virginia, adopted April 7, 2003 as amended.

2. Bill No. 7295 amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended and the map made a part thereof, by establishing R-O Residential - Office Zoning District for parcels within the Gettysburg Subdivision known as parcels 30.1, Washington Tax District Map 30 and adjacent roads and rights of way within the subdivision.

## PUBLIC HEARING

Bill No.7313: A BILL authorizing the submission of a proposed City of Charleston Municipal Home Rule Plan, attached as an Exhibit hereto, to the Municipal Home Rule Board consistent with W. Va. Code § 8-1-5a, in order to be considered for participation in the West Virginia Home Rule Pilot Program.

In favor of:

1. DAVID RAMSEY
2. Jean Pullys MD
3. David M. McVatters
- 4.
- 5.

Opposed to:

1. Dan Lawler - SBA
- 2.
- 3.
- 4.
- 5.



CHARLESTON NEWSPAPERS

P.O. Box 2993
Charleston, West Virginia 25330
Billing 348-4898
Classified 348-4848
1-800-WVA-NEWS
FEIN 55-0676079

Table with 2 columns: Field Name, Value. Fields include INVOICE DATE (11/19/07), ACCOUNT NBR (057478002), SALES REP ID (0018), INVOICE NBR (462883001).

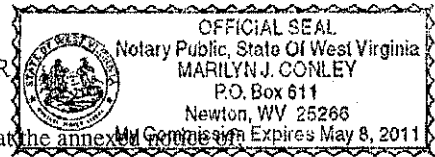
Legal pricing is based upon 63 words per column inch. Each successive insertion is discounted by 25% of the first insertion rate.

The Daily Mail is at a rate of \$.13 per word, and the Charleston Gazette is at a rate of \$.14 per word.

Main invoice table with columns: ISSUE DATE, AD TYPE, PUB, DESCRIPTION, AD NUMBER, AD SIZE, RATE, GROSS AMOUNT, NET AMOUNT. Includes line items for Marie O'Brien and a total invoice amount of 74.41.

State of West Virginia, AFFIDAVIT OF PUBLICATION

I, Mandy Wilkinson of THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER, THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,



published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed Public Hearing - Home Ru

was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County, West Virginia, on the 10TH day of NOVEMBER 2007. Published during the following dates: 11/09/07-11/16/07

Subscribed and sworn to before me this 20th day of November, 2007. Printers fee \$ 74.41

Marilyn J. Conley, Notary Public of Kanawha County, West Virginia


PUBLIC HEARING
Notice is hereby given that a Public Hearing will be held at a regular meeting of Council, on Monday, December 17, 2007, at 7:00 p.m., in the Council Chamber, 3rd Floor, City Hall, Charleston, West Virginia, on the proposed City of Charleston Municipal Home Rule Pilot Program written plan pursuant to W.Va. Code §8-1-5a. Interested parties may appear at the Public Hearing and be heard with respect to the proposed written plan. A copy of the proposed written plan may be inspected in the City Clerk's Office beginning November 16, 2007, between the hours of 8:00 a.m. and 5:00 p.m., daily, Monday through Friday. (314470)



**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 No. 7313, enacted by the City Council of the City of Charleston on December 17, 2007.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of the City, this 18th day of December, 2007.

  
James M. Reishman  
City Clerk

Seal

RD

# COMMITTEE REPORT

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

FROM: Council Committee on Municipal Home Rule

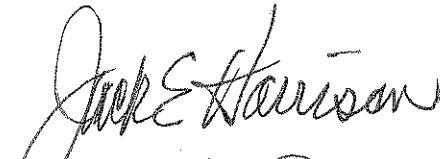
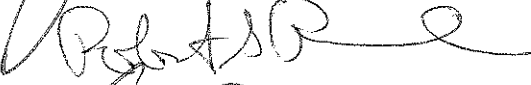




Your Committee on Municipal Home Rule

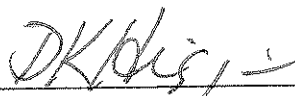
Has had under consideration:

**Bill No.7313 :** A BILL authorizing the submission of a proposed City of Charleston Municipal Home Rule Plan, attached as an Exhibit hereto, to the Municipal Home Rule Board consistent with W. Va. Code § 8-1-5a, in order to be considered for participation in the West Virginia Home Rule Pilot Program.

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

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 Chairman

**Bill No. 7313 :**

**Introduced in Council:**

**December 3, 2007**

**Introduced by:**

**David Higgins, Tom Lane**  
**Robert Reishman, Jack Harrison**  
**Mary Jean Davis, Will Hanna**

**Adopted by Council:**

**Referred to:**

**Municipal Home**  
**Rule Committee**

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2 Municipal Home Rule Plan, attached as an Exhibit hereto, to the Municipal Home Rule  
3 Board consistent with W. Va. Code § 8-1-5a, in order to be considered for participation in  
4 the West Virginia Home Rule Pilot Program.  
5  
6

7 **Now, therefore, be it Ordained by the Council of the City of Charleston, West**  
8 **Virginia:**  
9

10 That the Mayor and the City Administration are hereby authorized and requested to  
11 submit a proposed City of Charleston Municipal Home Rule Plan, attached as an Exhibit  
12 hereto, to the Municipal Home Rule Board consistent with W. Va. Code § 8-1-5a, in order  
13 to be considered for participation in the West Virginia Home Rule Pilot Program.  
14

## PROPOSED CITY OF CHARLESTON MUNICIPAL HOME RULE PLAN

**PREAMBLE.** The following proposed Municipal Home Rule Plan lists additional powers for the City of Charleston (the “City”) which will, if approved, enhance and improve the ability of the City to meet its present and future obligations. Provided the City is granted these additional powers, it will have the opportunity to improve its management, provision of services and the quality of life of its citizenry, and will further promote growth and prestige of our state.

**THE PLAN.** Pursuant to W. Va. Code § 5a, Article 1, Chapter 8, the City hereby proposes the following Municipal Home Rule plan:

1. **Delinquent Fees.** (Administrative) Presently, the City’s only remedy for collecting delinquent fees under West Virginia Code § 8-13-13 and § 8-13-15 is instituting a civil action in a court of competent jurisdiction. Currently, West Virginia Code § 8-13-13 precludes municipalities from attaching a lien on property as security for unpaid fees. This results in expensive proceedings in either Magistrate or Circuit Court, often to collect amounts which do not justify the filing fees involved. It is proposed that the City be given the power and authority to hold and conduct hearings at the City level in a manner similar to the authority which a municipality presently has to collect delinquent business and occupation taxes. The affected person or business would be entitled to appeal the decision by the municipality to Circuit Court. Once the decision by the City becomes final, the City would be authorized to file and record a lien against the judgment debtor with the county clerk.

In addition, W.Va. Code § 11-10-5d and case law interpreting this section currently prohibit the disclosure of any information received by the City Collector in connection with B&O taxes and arguably city service fees. Consistent with Kanawha County's long-standing practice of publishing delinquent real and personal property tax information, the City would like to be able to publish, in the medium of its choice, very limited information, specifically name, tax year(s) and amount(s) owed, for persons or businesses with delinquent B&O taxes or city service fees. The County's publication assists in the collection of its delinquent taxes, and the City would like to employ the same tool to assist in its collection efforts.

The City currently has in excess of \$2 million in delinquent fees. The City estimates that, if it is permitted to implement the collection procedures outlined above, its collections of such fees would increase by approximately thirty to thirty-five percent, thereby generating approximately \$600,000 to \$700,000 in additional revenue. See, Fiscal Impact Worksheet attached hereto as Exhibit A.

2. Deer Problem. (Administrative) Presently, municipalities are authorized to use urban bow hunting programs in an attempt to control the presence of deer within city limits. However, that program is limited both in time of the season and number of deer that can be harvested without reducing a hunter's statewide "bag limit." See, CSR § 58-45-3.3. It is proposed that the City be given the power and authority to conduct an urban bow hunting program without regard to time limitations and with no limit unless imposed by the City on the number of deer that can be harvested without reducing a hunter's "bag limit."



3. “Eyesores” and Dilapidated Structures. (Administrative) Current state law, W.Va. Code § 8-12-16, only allows municipalities to “adopt ordinances regulating the repair, alteration, or the vacating and closing or removal or demolition . . . of any dwellings or other buildings unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions . . . which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare.” This does not allow municipalities to address problems with property maintenance that detract from the neighborhood or constitute eyesores but do not yet constitute a threat to public safety. Additionally, West Virginia Code § 8-12-16 limits the lien amounts municipalities may assess for repairing or demolishing a structure to the assessed value of the property.

Further, the City, through City Code §102-52, delegates the duty to maintain sidewalks to abutting property owners and establishes a process by which the City may, after proper notice to the property owner, repair sidewalks that are out of good order and assess the abutting property owner with the cost of the repairs and, if necessary, place a lien on the property to secure re-payment of the repair costs. However, there is no clear authority under West Virginia law for the City’s ability to attach a lien to the property absent obtaining court judgment, and it is possible that W. Va. Code § 8-13-13 may prohibit the City from attaching a lien for sidewalk repairs.

Thus, it is proposed that the City be given the power and authority, after due notice to the owner or owners of property which is not being properly maintained, to enter the property and to repair, alter or demolish the property, and/or to mow unkempt

grass to ensure that the property does not detract from the neighborhood and deteriorate further. The cost of that rehabilitation would constitute a lien against the property without the necessity of obtaining a court order. Additionally, the City proposes that it be permitted, if necessary, to attach a lien without first obtaining a court order in those situations in which the City has repaired a sidewalk after following the notice and steps outlined in City Code § 102-52.

4. Procurement of Architect-Engineering Services. (Administrative) Present state law regarding the City's procurement of design contractors requires the selection process be conducted in two parts: (1) a committee must select the top three most highly qualified firms and (2) negotiate price for the contract. W.Va. Code § 5G-1-3. If negotiations with the most qualified firm do not result in a satisfactory contract, then the committee moves to the second most qualified firm and negotiations begin again with the new firm. In order to streamline the process and allow the City to select the "best value" for all projects, the City, under Home Rule, proposes to instead follow a selection process similar to federal Housing and Urban Development regulations under 24 CFR 85.36(d)(3). This selection process would permit the City to issue a Request for Proposal and then select the proposal that provides the best value by taking into consideration the price, qualifications and all other factors material to the project.

5. B&O taxing authority. (Taxing) Presently, the City is limited by W.Va. Code § 8-13-5 and related laws in tax classifications, exemptions and maximum rates related to the City's imposition of B&O taxes. The current maximum rates were set by the state in 1959 and no longer reflect current economic conditions. Similarly, the current mandatory classifications and exemptions under state law were adopted and modified by the state

between approximately 1921 and 1987, are antiquated, and restrict the City's ability to generate necessary financial resources in a manner that is consistent with current economic conditions. The City proposes that it be permitted the flexibility to determine rates, classifications and exemptions with regard to its B&O tax structure so long as those determinations are consistent with local needs and reasonable economic policies; except that no B&O Tax will be imposed on any insurance company, or any non-profit company or other charitable, religious or fraternal organization which is currently exempt under WV Code 11-13-3 or 11-24-5(b) or under 110 CSR series 16 Sec 3.

6. Building and Zoning Administration Enforcement Provisions. (Administrative)  
Presently, there is no clear authority under state law that would permit building and zoning administrators or City law enforcement officers to issue "on the spot" citations for external sanitation violations or common nuisances. Additionally, W.Va. Code § 8-12-16 mandates certain procedural and notice requirements including a requirement that, "[a]ll orders issued by the enforcement agency shall be served in accordance with the law of this state concerning the service of process in civil actions" and a requirement that such orders "be posted in a conspicuous place on the premises affected by the complaint or order . . . ." Further, W.Va. Code § 8-12-16(d) currently mandates that "no ordinance shall be adopted without providing therein for the right to apply to the circuit court for a temporary injunction restraining the enforcement agency pending final disposition of the cause." Currently, building and zoning administrators issue citations only after application to and approval by the Municipal Court. The process of successfully prosecuting a building or zoning violation may take a month or more, and fosters recidivism from violators who will correct violations to get a case dismissed, then re-

offend, knowing the prosecution clock will start anew. It is proposed that building and zoning administrators and/or City law enforcement officers be given power to issue citations for reoccurring exterior sanitation/common nuisance violations (including, but not limited to, trash/rubbish, overgrown weeds/grass, junked or otherwise unlawfully situated motor vehicles, maintenance of vacant structures, broken windows or glass, failure to maintain sidewalks and driveways) at the site of the violation and at the time the violation is recognized, similar to the manner in which traffic citations are issued.

7. Relief from Division of Natural Resources (“DNR”) “per project” permitting. (Administrative) Under current law and Department of Natural Resources regulations, Charleston is required to obtain a permit to clean and dredge perennial and intermittent streams within City limits for every individual project undertaken by the City. This requirement is duplicative of federal Clean Water Act requirements. Section 404 of the Act requires a separate permit to dredge or fill material in surface waters; such permit programs are administered by the United States Army Corps of Engineers and the United States Army Corps of Engineers exercises primary jurisdiction over the control of such waterways. 33 U.S.C. §§ 1251 et seq. As such, obtaining State approval for the same dredging or filling activity can delay the project, leaving City residents who live along City waterways without timely relief. This proposal allows the City to obtain approval for dredge and fill activities in surface waters within City limits only from the United States Army Corps of Engineers in order to provide timely relief from unsightly or dangerous conditions within the City.

8. Relief from “per load” Department of Environmental Protection (“DEP”) Testing Costs and Permitting. (Administrative) Under current state law and DEP

regulations, the City pays for DEP testing of, and is required to obtain solid waste permits for loads of material (including dirt) bound for landfills on a “per load” basis. As time-frames for granting permits and the number of permits needed throughout the year may vary, this causes problems from both a project planning and budgeting perspective. Commercial enterprises are allowed an annual permit with a tonnage limit, provided that the loads consistently contain the same material and are disposed of in the same facility. It is proposed that the City also be allowed annual permits for recurring loads of waste generated by similar activity. For example, loads of dirt from residential lot clean-up or grading would be covered under an annual permit, and disposing of such loads would not incur the delay of having to wait for individual permits. With respect to testing requirements, Home Rule cannot exempt operators of solid waste disposal facilities of their obligations under W. Va. Code § 22-15-1 et seq. and associated federal and state laws to insure that unsuitable waste types are not being put in their facilities. The City proposes that it be allowed to contract with a private DEP certified laboratory for a flat yearly fee to complete and certify the testing of each load to the standards of the DEP. Copies of the test results would be kept on file, and provided to the solid waste facility operator and the DEP upon request. Any load in which testing indicated a variance from the waste allowed under the annual permit would then be submitted for an individual permit. This would allow the facility to maintain its environmental standards, while allowing the City to more accurately budget for testing costs, and schedule projects without the variable of waiting for individual permits for every load.

9. Disposition of City Property. (Administrative) Under § 8-12-18 of the W.Va. Code, the City must convey or lease for fair market value, buildings or land to

non-profit organizations providing services that benefit the citizens of the City. Such sale may create a financial burden for the non-profit, and by leasing such property to these organizations, the City retains liability inherent therein. It is proposed that the City be allowed to lease or convey (without auction) for less than fair market value buildings and land to non-profit organizations who are providing services to the public, that, in their absence, the City itself might have to finance or administer; provided that a test similar to that imposed by W.Va. Code § 1-5-3 is met and that ownership of the land or building would revert to the City in the event the non-profit ceased to provide such services to the public consistent with § 8-32-1.

Additionally, W.Va. Code § 8-12-18(b) mandates that municipalities hold public auctions for the sale of all real and personal property worth in excess of one thousand dollars (\$1,000.00) and announce such auction in a Class II legal advertisement. When the primary purpose is to facilitate economic development within the City and/or the availability of necessary or convenient resources for the benefit of its citizenry, the City proposes that it be permitted to convey real and/or personal property with a value in excess of one thousand dollars (\$1,000.00) for fair market value without having to follow the auction procedures outlined in W.Va. Code § 8-12-18(b). This would avoid costly and time consuming auction procedures and the possibility that the City would be precluded from conveying property for the desired use in a situation where the primary goal is to facilitate economic growth and/or to make available necessary and convenient resources for the benefit of Charleston and its residents.

10. Relief from Municipal Juror Number Requirements. (Administrative) Under W.Va. Code § 8-10-2 the Municipal Court is required to seat twelve jurors for every jury

trial in Municipal Court. All other rules governing jury trials in Municipal Court are the same as those established under the Rules of Criminal Procedure for the administration of Magistrate Court. It is proposed that the City be permitted to reduce the number of jurors to the same number as would be seated for jury trials under rules governing Magistrate Courts; *i.e.*, six jurors.

The City estimates that this would result in increased efficiency, consistency of court rules and practices amongst courts in the State of West Virginia and a financial cost savings of approximately \$2,700.00 per year. See, Fiscal Impact Worksheet attached hereto as Exhibit B.

11. Relief from Design-Build Procurement Act requirements. (Administrative)  
The City finds that the requirements of the Design-Build Procurement Act, W.Va. Code § 5-22A et seq., are unduly burdensome to the development and completion of City projects. The City finds that the process for design-build projects: Design-Build Board approval of the project, invitation for qualifications, identification of the three most qualified design-builders, the invitation for proposals, review of the technical submission and the cost submission, and final acceptance; may delay projects, and that the process may not produce the desired result of the best combination of design-builder and cost. In order to streamline the process and allow the City to select the “best value” proposal, it is proposed that these projects be awarded through an RFP process, consistent with federal guidelines published in 24 CFR 85.36(d)(3)(iv) which reads, “Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.”

12. Allow contracts with other jurisdictions via Resolution. (Administrative)

Under W.Va. Code § 8-11-3(10), the City cannot enter into a contractual or other agreement with another jurisdiction until Council approves the transaction by ordinance. Currently, due to state law requirements regarding the passage of an ordinance, *See* W. Va. Code § 8-11-4, it takes approximately one month for Council to approve a contract or other agreement with another jurisdiction. In order to promote and facilitate cooperation between jurisdictions and to expedite the process of entering into a contract or other agreement with another governmental entity, the City proposes that it be allowed to approve these contracts or other agreements by resolution in the same manner as it does with similar agreements with non-governmental entities.

13. Municipal Healthcare Provider Tax. (Taxing) Currently, state law provides for state imposition of a health care provider tax consistent with W.Va. Code Section 11-27-1 et seq. The City requests that it be permitted to adopt and collect a similar health care provider tax on providers of inpatient hospital services, or on providers of outpatient hospital services, or on providers of both services, at a rate of tax not to exceed that permitted under federal law and to transfer all or a portion thereof to the state to be used as the non-federal share of enhanced Medicaid reimbursement rates to City of Charleston Hospitals, thereby ensuring economy, efficiency and quality of care within the City.

Contingent upon the Bureau of Medical Services obtaining a State Plan Amendment (SPA), the City of Charleston requests, through Home Rule, that it be permitted to establish a hospital provider tax for the purpose of increasing the amount of Medicaid matching funds available to Charleston Hospitals. The tax would be made



contingent upon Centers of Medicare and Medicaid Services (CMS) approval of the enhanced reimbursement. Once collected, the City would transfer all the proceeds of the tax to the Bureau for Medical Services (BMS) within the Department of Health and Human Resources, the state's Medicaid agency. BMS would then use the tax funds as the non-federal share of enhanced reimbursement to Charleston hospitals.

**EXHIBIT A – FISCAL IMPACT WORKSHEET FOR PROPOSAL ITEM NO. 1**

Estimate of increased revenues:

Current outstanding delinquent fees = in excess of \$2 million

Estimated increased collection rate = 30-35%

**Total increased revenues = \$600,000 to \$700,000**

**EXHIBIT B - FISCAL IMPACT  
WORKSHEET FOR PROPOSAL ITEM NO. 10**

Cost of juror in Municipal Court per day = \$15.00

Cost of 12 person jury in Municipal Court day = \$180.00

Estimated Number of Jury Trials in Municipal Court Per Year = 30 (total number granted as of November 13, 2007 = 29)

Total cost of 12 person juries per year =  $180 \times 30 = \$5,400.00$

Total cost of 6 person juries per year =  $90 \times 30 = \$2,700.00$

**Total Cost Savings Per Year = \$2,700.00**

## FISCAL IMPACT WORKSHEET FOR PROPOSAL ITEM NO. 1

Estimate of increased revenues:

Current outstanding delinquent fees = in excess of \$2 million

Estimated increased collection rate = 30-35%

**Total increased revenues = \$600,000 to \$700,000**

## City of Charleston Home Rule Hospital Provider Tax Feasibility Paper

December 13, 2007

The Charleston Home Rule Plan provides the opportunity for the city to assist acute care hospitals located within the city limits of Charleston. Municipalities outside of the state of West Virginia support the provision of medical care to the poor and uninsured. Currently neither Charleston nor any West Virginia city has a mechanism to provide significant financial support. The recently adopted home rule pilot provides an opportunity for this needed local help.

Medicaid is a state program that is federally backed. It provides payment for medically necessary services for the poor who have limited resources or assets. Each state receives a certain amount of federal money for each local dollar raised. In West Virginia, for every dollar raised locally the federal government provides the Medicaid program almost three dollars. This money can be used only for the provision of medical services as provided for in the state-specific Medicaid Plan. The Bureau for Medical Services (BMS), which is a part of the Department of Health and Human Resources, administers Medicaid.

Hospitals in the City of Charleston face substantial funding shortages due to a number of factors. First, hospitals in the City provide a significant amount of care to uninsured city residents who cannot pay for the care they receive. In a recent year, that amount was approximately \$20,000,000. Second, the state's Medicaid program pays below cost for the care delivered to program recipients. For one city hospital Medicaid pays only 47 percent of the cost of services rendered to Medicaid recipients. Third, Charleston has the highest number of West Virginia Public Employees Insurance Agency (PEIA) Members of any city in the state. PEIA is the health insurance program for state, higher education, and public education employees and the retirees for each group. PEIA only pays 51 percent of the cost of services delivered to the plan's members.

To make up these shortages that result from the uninsured, underinsured, and government operated programs, hospitals are forced to take several actions. Each action comes with dire consequences, which have direct effects on Charleston residents:

1. To the degree possible, local hospitals shift the uncompensated amounts (loss from governmental programs, charity and bad debts) to private insurance programs. The end result is a hidden tax that increases the cost of local health insurance policies, making it harder for Charleston businesses to provide health insurance for their employees.

2. The hospitals put off needed repairs to their buildings. For many facilities, deferring maintenance is no longer an option. CAMC alone has a capital budget need of one billion dollars.
3. The hospitals delay the purchase of newest cutting edge medical technology.

Through the city's home rule plan, Charleston would like to have the opportunity to help solve a portion of the uncompensated care problem facing city hospitals. Chart 1 shows the net revenue of each of the acute care hospitals operating in the city. If the city were to enact a broad-based acute care hospital provider tax (the tax could be levied on either inpatient or outpatient services or both) and if the proceeds were transferred to the state government as Medicaid match, then significant dollars could be made available to help the hospitals meet their uncompensated care burden.

**Net Revenue Charleston Acute Care Hospitals Chart 1**

Net Revenue	Inpatient	Outpatient	Total
CAMC (12/31/06)	\$367,313,000	\$200,774,000	\$568,087,000
St. Francis (6/3-/06)	\$15,704,785	\$23,311,077	\$39,015,862
Highland (9/30/06)	\$7,230,362	\$2,252,720	\$9,483,082
Eye and Ear (12/31/06)	\$145,640	\$5,318,045	\$5,463,685
Total Revenue	\$390,393,787	\$231,655,842	\$622,049,629

While this description might sound simple, there are several steps that must be taken to make this program a reality. The steps are as follows:

1. City of Charleston's home rule plan is approved by the state;
2. The hospitals in the city and BMS (Bureau of Medical Services) develop a model for an amendment to the state specific Medicaid Plan to allow for enhanced payments to acute care hospitals located in the City of Charleston;
3. The city adopts a provider tax ordinance that meets the federal and state guidelines, the actual rate would be established during this step and be tied to maximizing the local match (the collection of the tax would be contingent on federal government approval);
4. The state submits the amendment of the Medicaid Plan to the federal government;
5. The federal government approves the plan;

6. The city collects the tax and transfers it to BMS; and
7. The hospitals begin to receive the enhanced revenue.

The amount of enhanced revenue that can be raised is limited by a Medicaid upper payment limit established by federal regulation. This is a complicated calculation that compares current West Virginia Medicaid payments against those of another federal government program, Medicare. This calculation yields a number that caps the amount of Medicaid payments a hospital can receive.

Given that the tax must be broad-based and that each facility will be reimbursed based on Medicare rates, it appears the total enhanced reimbursement would be in the \$10,000,000 range. While the final amount might be higher or lower, this appears to be the benchmark. Chart 2 provides hospital-specific tax information.

**Tax needed to generate match for enhanced payments Chart 2**

Net Revenue	Inpatient	Outpatient	Total
CAMC (12/31/06)	\$367,313,000	\$200,774,000	\$568,087,000
St. Francis (6/3-/06)	\$15,704,785	\$23,311,077	\$39,015,862
Highland (9/30/06)	\$7,230,362	\$2,252,720	\$9,483,082
Eye and Ear (12/31/06)	\$145,640	\$5,318,045	\$5,463,685
<b>Total Revenue</b>	<b>\$390,393,787</b>	<b>\$231,655,842</b>	<b>\$622,049,629</b>

Tax at 0.45%	Inpatient	Outpatient	Total
CAMC	\$1,652,909	\$903,483	\$2,556,392
St. Francis	\$70,672	\$104,900	\$175,571
Highland	\$32,537	\$10,137	\$42,674
Eye and Ear	\$655	\$23,931	\$24,587
<b>Total Tax</b>	<b>\$1,756,772</b>	<b>\$1,042,451</b>	<b>\$2,799,223</b>

Total enhanced Medicaid funds (including tax)	<u>\$10,766,244</u>
Net enhanced Medicaid funds	<u>\$7,967,020</u>

The funds provided by this home rule initiative would allow the hospitals to better meet their uncompensated care burden. This program would reduce future hospital rate increases to the City of Charleston's private insurance market and allow the facilities to better meet their capital outlay budgets and purchase needed medical technology. Just as important the city would have a mechanism to assist its uninsured residents who are accessing the medical system while reducing the burden on the private sector.



## OFFICE OF THE CITY ATTORNEY

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Paul D. Ellis  
City Attorney of Charleston

Date: **December 19, 2007**  
Applicant: **CITY OF CHARLESTON, WEST VIRGINIA**  
Re: City of Charleston Municipal Home Rule Proposal

Ladies and Gentlemen:

As City Attorney the City of Charleston, I have reviewed West Virginia Code §8-1-5a, Municipal Home Rule Pilot Program Application Guidelines (rev. November 2, 2007), the proposed City of Charleston Municipal Home Rule Plan, and other documents related thereto (collectively, the "Plan") 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 Plan, it is my opinion that the Plan complies with the required statutory requirements in that:

1. The Plan does not contain any proposed changes to ordinances, acts, resolutions, rules or regulations that are contrary to the:
  - i. US or WV Constitutions<sup>1</sup>,
  - ii. Chapter 60 – A Uniform Controlled Substances Act,
  - iii. Chapter 61 – Crimes and Their Punishment,
  - iv. Chapter 62 – Criminal Procedure – of this code;
2. The Plan 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



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<sup>i</sup> The proposed Plan as approved for submission by Charleston City Council on December 17, 2007, contained a provision requesting reduction of the number of jurors for Municipal Court jury trials from twelve to six for the purpose of efficiency, reduction in costs and consistency with Magistrate Court practices. Based on my final review of the Plan for purposes of this opinion, I have determined that this provision is inconsistent with the requirements of art. III, §14, W.Va. Const. and art. VIII, §11, W.Va. Const., as interpreted by *Champ v. McGhee*, 165 W.Va. 567 (1980). Because this proposed provision could not be certified in my opinion as being consistent or compliant with Constitutional or statutory requirements, it has been stricken from the proposed Plan.