

**MUNICIPAL HOME RULE PILOT
PROGRAM**

2016 PROGRESS REPORT

**CITY OF
LEWISBURG**

West Virginia State Code §8-1-5a (m) provides:

“Commencing December 1, 2015, and each year thereafter, each participating municipality shall give a progress report to the Municipal Home Rule Board and commencing January 1, 2016, and each year thereafter, the Municipal Home Rule Board shall give a summary report of all the participating municipalities to the Joint Committee on Government and Finance.”

The Municipal Home Rule Board has developed this standard format for Pilot Program participating municipalities to prepare and submit their respective Annual Progress Reports. The intent of this standard format is to gather and compile information in a consistent, easily understood, and efficient manner that will be used to develop a concise and practical summary report to the Joint Committee on Government and Finance.

Annual Progress Reports must be submitted electronically as an individual file in PDF format no later than the close of business on December 1, 2016, by emailing Debbie Browning at debbie.a.browning@wv.gov, West Virginia Development Office, West Virginia Home Rule Pilot Program, State Capitol Complex, Building 6, Room 553, Charleston, West Virginia 25305-0311, 304-558-2234.

A. General Information		
Name of Municipality: <u>City of Lewisburg</u>		
Certifying Official: <u>John Manchester</u>	Title: <u>Mayor</u>	
Contact Person: <u>John Manchester</u>	Title: <u>Mayor</u>	
Address: <u>942 Washington St. West Lewisburg WV 24901</u>		
City, State, Zip: <u>Lewisburg WV 24901</u>		
Telephone Number: <u>304-645-2080</u>	Fax Number: <u>304-645-2194</u>	
E-Mail Address: <u>jmanchester@lewisburg-wv.com</u>		
2010 Census Population: <u>3830</u>		
B. Municipal Classification		
<input type="checkbox"/> Class I <input type="checkbox"/> Class II <input checked="" type="checkbox"/> Class III <input type="checkbox"/> Class IV		
C. Pilot Program Entry Phase		
<input type="checkbox"/> Phase I (2007 Legislation) <input type="checkbox"/> Phase II (2014 Legislation) <input checked="" type="checkbox"/> Phase III (2015 Legislation)		
D. Attest		
I hereby confirm that I am the authorized official for this municipality and certify that the information submitted herein and attached hereto is true and accurate and that this report addresses each and every initiative included in the original Home Rule Pilot Program Plan Application for this municipality and any subsequent amendments, if applicable.		
<u>John Manchester, Mayor</u>	<u></u>	<u>11/28/16</u>
Type Name of Certifying Official	Signature of Certifying Official	Date

Please use this page to report progress on each **non-tax related initiative** included in your Home Rule Application. Each non-tax related initiative must have a separate page.

Initiative: Brunch Bill
Category of Issues Addressed (check all that apply) <input type="checkbox"/> Organization <input checked="" type="checkbox"/> Administration <input type="checkbox"/> Personnel <input type="checkbox"/> Other
Was this non-tax initiative a part of your original plan application <input type="checkbox"/> or a plan amendment <input checked="" type="checkbox"/> ?
Has the ordinance(s) needed to implement this initiative been enacted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, when was the ordinance enacted? July 19, 2016
If no, please describe challenges faced in enacting the related ordinance(s)
<p>SUCSESSES – In the space below, please provide a brief narrative highlighting successes realized through the implementation of this initiative and any metrics used to track performance.</p> <p>Six downtown restaurants have taken advantage of the "Sunday Brunch" initiative. They report an increase in average bill during the 10 a.m. to 1 p.m. window with a small increase in dining traffic during those hours. Some additional foot traffic downtown on Sunday mornings and afternoons has been observed. Year to year sales comparisons are difficult because we are still in June 23 flood recovery mode that has had a 10-15% negative impact on downtown sales overall. Instituting this change in the midst of flood challenges was received warmly by merchants.</p>
<p>LESSONS LEARNED – In the space below, please provide a brief narrative highlighting lessons learned during implementation of this revenue initiative that would benefit other municipalities.</p> <p>Use a little time in each applicable meeting (finance and council) to talk about the issue and to layout the specific next steps involved prior to public meetings, votes and implementation.</p>

ORDINANCE 263

Councilmember Lutz introduced the following ordinance and moved for its adoption, which motion was seconded by Councilmember Blake, the ordinance being in the following words and figures:

AN ORDINANCE AMENDING THE CITY OF LEWISBURG CODE, ARTICLE 741, ALCOHOLIC BEVERAGES, BY AMENDING AND REENACTING SECTIONS 741.01, 741.02 AND 741.03, AND ADDING SECTION 741.01H TO ALLOW FOR SUNDAY ALCOHOL SALES AFTER 10 AM

WHEREAS, on July 11, 2016, the West Virginia Municipal Home Rule Board approved the amendment to the City of Lewisburg's Municipal Home Rule application to allow for the sale of alcohol beverages after 10:00 AM on any Sunday by certain licensees ,and ;

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

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

741.01 GENERAL.

(a) Definitions. Words and phrases defined in West Va. Code 11-16-2, 60-1-5 and 60-7-2 shall have the same meanings as therein defined wherever such words and phrases are used in this chapter.

(b) Tax Imposed on Purchase Price of Intoxicating Liquors Sold at Retail Store.

(1) Pursuant to West Va. Code 8-13-7, as amended, there is hereby imposed a tax of five percent (5%) of the retail purchase price of any and all intoxicating liquors purchased from the Alcohol Beverage Control Commission or from any store or outlet authorized by ABCC or from any person licensed to sell wine at retail to the public under the provision of Chapter 60, Article 8 of the aforesaid Code of West Virginia, within the corporate boundaries or within one mile of the corporate boundaries of the City. Such tax shall be levied upon the purchaser of said intoxicating liquor or wine, and shall be added to any collected with the retail purchase price of such intoxicating liquor or wine. Such tax shall be received by the Municipality from the State Treasury pursuant to the rules and regulations adopted by the Alcohol Beverage Control Commission. Provided, however, that such tax shall not be collected on intoxicating liquors, other than wine, sold by or purchased from holders of a license issued under the provisions of Chapter 60, Article 7 of said West Virginia Code. Provided further, such tax shall be collected upon all sales of wine to holders of a license issued under the provisions of Chapter 60, Article 7 of said West Virginia Code from a wine distributor licensed pursuant to the provisions of Chapter 60, Article 3 et seq of said West Virginia Code.

(2) A certified copy of the Ordinance from which this section derives has been provided to the State Alcohol Beverage Control Commissioner, as required by West Va. Code 6 13-7, which further provides that the City tax shall be added to and collected with the purchase price.

(c) Specific Acts Forbidden.

(1) A person under the age of twenty-one (21) years may not order, pay for, share the cost of, or attempt to purchase any non-intoxicating beer, wine or alcoholic liquors from a licensee, or consume any non-intoxicating beer, wine or alcoholic liquors purchased from a licensee or possess any non intoxicating beer, wine or alcoholic liquors purchased from a licensee. Any

person under the age of twenty-one (21) years who violates any provisions of this subsection is guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed five hundred dollars (\$500.00) or imprisoned in the Regional Jail for a period not to exceed seventy-two (72) hours, or both fined and imprisoned, and, in addition to such fine and imprisonment, may, for the first offense, be placed on probation for a period not to exceed one (1) year: provided, that nothing in this subsection shall prohibit a person who is at least eighteen (18) years of age from purchasing or possessing non-intoxicating beer, wine or alcoholic liquors when he or she is acting upon the request of or under the direction and control of any member of a State, federal or local law-enforcement agency, or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity regarding the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

(2) Any person under the age of twenty-one (21) years who, for the purpose of purchasing non-intoxicating beer, wine, or alcoholic liquors from a licensee, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase non-intoxicating beer, wine or alcoholic liquors from a licensee, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars (\$500.00) or shall be imprisoned in the Regional Jail for a period not to exceed seventy-two (72) hours, or both such fine and imprisonment, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one (1) year.

(3) Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one (21), any non-intoxicating beer, wine or alcoholic liquors purchased from a licensee, is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than five hundred dollars (\$500.00), or imprisoned in the Regional Jail not more than ten (10) days, or both fined and imprisoned.

(4) A person shall not:

A. Manufacture or sell in this City without a license any alcoholic liquor except as permitted by State Law;

B. Aid or abet in the manufacture or sale of alcoholic liquor without a license except as permitted by State Law;

C. Sell without a license any alcoholic liquor other than permitted by State Law; Sell without a license any alcoholic liquor other than provided by West Virginia Code Article 60-6 and Section 741.01h;

D. Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, un-rectified or impure form of ethyl alcohol, or other foreign or deleterious substance or liquid;

E. Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this State;

F. Advertise any alcoholic liquor in this City except in accordance with the rules and regulations of the Commission;

G. Distribute, deal in, process, or use crowns, stamps or seals required under the authority of this chapter, except in accordance with the rules and regulations prescribed by the State Liquor Control Commission.

(d) Unlawful Sale or Possession by a Licensee. A person licensed under the provisions of this article shall not:

(1) Sell alcoholic liquors of a kind other than that which such license or this article authorizes him to sell.

(2) Sell beer to which wine, spirits or alcohol has been added.

(3) Sell wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture thereof under regulation of the State Liquor Control Commission.

(4) Sell alcoholic liquors to a person who is:

- A. Less than twenty-one (21) years of age;
- B. A habitual drunkard;
- C. Intoxicated;
- D. Addicted to the use of narcotic drugs;
- E. Mentally incompetent.

(5) Sell alcoholic liquors except as authorized by his license.

(6) Sell any alcoholic liquor when forbidden by the provisions of this article.

(7) Keep on the premises covered by his license alcoholic liquor other than that which he is authorized to sell by such license or by this article.

(e) Intoxication or Drinking in Public Places. It shall be unlawful for any person to:

(1) Appear on property owned by the City of Lewisburg or in a public place in an intoxicated condition.

(2) Drink alcoholic liquor or non-intoxicating beer in a public place or possess the same in any open container in or on any public sidewalk, street, lane or any public place within the corporate limits.

(3) Drink alcoholic liquor or non-intoxicating beer in a motor vehicle on any street or in a public garage or parking place or place of business open to the general public, except those places duly licensed for such purpose pursuant to this chapter.

(4) Tender a drink of alcoholic liquor or non-intoxicating beer to another person in a public place.

(5) Possess alcoholic liquor in the amount in excess of one gallon, in containers not bearing stamps or seals of the West Virginia Liquor Control Commission, without having first obtained written authority from that Commission therefore.

(6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of Chapter 60 of the Code of West Virginia.

(f) False Statement in Application for License. It shall be unlawful for any applicant for any license under this article to knowingly make any false Statement of any material fact in his application for such license.

(g) Sale of Liquor by the Bottle by Retail Liquor Stores.

(1) As the State of West Virginia shall require a retail outlet to obtain a liquor license from the State, the City of Lewisburg shall also issue liquor licenses subsequent to the retail outlet receiving a liquor license from the State. After the issuance of a State liquor license, the applicant must then file an application with the City Recorder of the City of Lewisburg, West Virginia.

(2) The annual retail license period shall be from the first day of July to the thirtieth day of June of the following year. The annual retail license fee, if an applicant holds a Class A retail license under State Law, shall be the sum of one thousand five hundred dollars (\$1,500) per outlet. The annual retail license fee if an applicant holds a Class B license shall be five hundred (\$500) per outlet. The annual retail license fee for the initial year of issuance shall be prorated based on the number of days remaining between the date of issuance and the following thirtieth day of June.

(3) A retail license shall expire on the thirtieth day of June each year and may be renewed only upon the submission to the City Recorder of the City of Lewisburg, West Virginia.

(4) No person may sell liquor at any retail outlet if the retail license applicable to such outlet has been suspended or revoked, or has expired.

(5) All retail licenses issued or renewed under the provisions of this Section shall expire and be of no further force or effect as of the first day of July, in 2000. Licenses issued thereafter will be so issued in accordance with applicable law.

(6) Violations of the provisions of this article shall be punishable by a fine of five hundred (\$500) dollars and/or imprisonment for up to 30 days.

(h) 521.03A Sale of Alcohol on Sundays.

A) "On-Premise Licensee" shall be defined to mean any person who holds one of the following Class A licenses issued by the West Virginia Alcohol Beverage Control Administration to sell alcoholic beverages:

- i. Private Club (less than 1,000 members) - liquor, wine & non-intoxicating beer;
- ii. Private Club (1,000 or more members) - liquor, wine & non-intoxicating beer;
- iii. Fraternal Club (Non-Profit) - liquor, wine & non-intoxicating beer;
- iv. Fraternal Club (Non-Profit) - non-intoxicating beer;
- v. Tavern - non-intoxicating beer;
- vi. Private Wine Restaurant - wine only;
- vii. Private Wine Restaurant - wine & non-intoxicating beer only;
- viii. Private Wine Spa - wine only;
- ix. Private Wine Bed & Breakfast - wine only;
- x. Brew Pub (Resident Brewer/Importer License Required);
- xi. Special Events (Fairs and Festivals) - wine & non-intoxicating beer;
- xii. Special Events (Fairs and Festivals) - wine only;
- xiii. Special Events (Fairs and Festivals) - non-intoxicating beer only; or
- xiv. Growler.

B) "Person" shall be defined to mean an individual, firm, corporation, association, partnership, limited partnership, Limited Liability Company or other entity, regardless of its form, structure or nature.

C) Notwithstanding anything to the contrary contained in the Code of City of Lewisburg, Code of West Virginia, or Code of State Rules of West Virginia, any On-Premise Licensee shall be permitted to sell alcoholic beverages pursuant to the terms of its license, but beginning at ten o'clock a.m. (10:00 AM) on any Sunday

741.02 NON-INTOXICATING BEER.

(a) License Required for Manufacture, Sale or Transportation. No person shall manufacture, sell, possess for sale, transport or distribute non-intoxicating beer within this City except in accordance with the provisions of this article and after first obtaining a City license therefore, as hereinafter provided.

(b) License Tax Imposed.

(1) There is hereby levied and imposed an annual license tax upon all dealers in and of non-intoxicating beer, which license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year, and if granted for a less period, the tax shall be computed quarterly in proportion to the remainder of the fiscal year as follows:

A. Retail dealers shall be divided into two classes, Class A and Class B. In the case of a Class A retail dealer the annual license fee shall be one hundred dollars for each place of business; the annual license fee for social, fraternal or private clubs not operating for profit, and having been in continuous operation for two years or more immediately preceding the date of application, shall be one hundred dollars.

(2) Class A licenses issued for social, fraternal or private clubs shall authorize the licensee to sell non-intoxicating beer at retail for consumption only on the licensed premises where sold. All other Class A licenses shall authorize the licensee to sell non-intoxicating beer at retail for consumption on or off the licensed premises.

(3) In the case of a Class B retailer, the license fee shall be fifteen dollars for each place of business. A Class B license shall authorize the licensee to sell non-intoxicating beer at retail in bottles, cans or other sealed containers only, and only for consumption off the licensed premises. Sales under this license to any person at any one time must be in less quantities than five gallons. Such license may be issued only to the proprietor or owner of a grocery store. For the purpose of this article the term "grocery store" means and includes any retail establishment commonly known as a grocery store, or delicatessen, where food or food products are sold for consumption off the premises.

(4) In the case of a distributor the license fee shall be two hundred fifty dollars for each place of business.

(5) In the case of a brewer, with its principal place of business located in the City, the license fee shall be five hundred dollars for each place of manufacture.

(c) Application for License. A license may be issued by the City Recorder to any person who submits an application therefore, accompanied by a license fee, stating under oath:

(1) The name and residence of the applicant, how long he has resided there, that he has been a resident of the State of West Virginia for a period of two years next preceding the date of his application, that he is twenty-one years of age, and, if a firm, association, partnership or corporation, the residence of the members or officers for a period of two years next preceding the date of such application.

(2) The particular place for which the license is desired and a detailed description thereof.

(3) The name of the owner of the building and, if the owner is not the applicant, that such applicant is the actual and bona-fide lessee of the premises.

(4) That the place or building in which it is proposed to do business conforms to all laws and Ordinances regarding health, building and fire regulations applicable thereto and is a safe and proper place or building, and is not within three hundred feet of any school or church, measured from the front door, along the street or streets; provided, that this requirement shall not apply to a Class B licensee.

(5) That the applicant has never been convicted of a felony, or a violation of the liquor laws, either federal or State.

(6) That the applicant has not during five years next immediately preceding the date of the application had a non-intoxicating beer license revoked, nor during the same period been convicted of any criminal offense.

The foregoing provisions and requirements are mandatory prerequisites for the issuance of a license, and in the event any applicant fails to qualify there under, the license shall be refused. In addition to the information furnished in any application, the City Treasurer or the City Council may make such additional and independent investigation of each applicant, and of the place to be occupied as deemed necessary or advisable.

(d) Fees for Issuance of License. Every applicant for a license under this article shall, before the license is issued, pay to the City Recorder the applicable license tax and in addition shall pay a fee of fifty cents (\$.50) for each license certificate to cover the costs of issuance thereof.

(e) Grounds for Refusing License. The City Council, acting upon the recommendation of the City Recorder or upon its own motion, may refuse a license to any applicant under the provisions of this article if it shall be of the opinion:

(1) That the applicant is not a suitable person to be licensed; or

(2) That the place to be occupied by the applicant is not a suitable place; or in the case of a Class A license, that the place to be occupied is within three hundred feet of any church or school, measured from front door to front door along the street or streets; or

(3) That the license should not be issued for reason of conduct declared to be unlawful by this article.

(f) License Not Transferable; Change of Location. No license issued under the provisions of this article shall be transferred to another person, nor shall the location of the premises to which the license relates be changed without the consent of the City Council, which consent may be refused, in its discretion.

(g) Display of License. Each license issued under the provisions of this article shall be maintained on display in a conspicuous place on the premises to which it relates.

(h) Unlawful Acts; Penalties. It shall be unlawful:

(1) For any licensee, his servants, agents or employees to sell, give or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, non-intoxicating beer on weekdays between the hours of 2:00 a.m. and 7:00 a.m., or between the hours of 2:00 a.m. and 1:00 p.m. on any Sunday, except in private clubs licensed under the provisions of West Va. Code Article 60-7, and Section 741.01h where the hours shall conform with the hours of alcoholic liquors;

(2) For any licensee, his servants, agents or employees, to sell, furnish or give any non-intoxicating beer to any person visibly or noticeably intoxicated, or to any insane person, or to any habitual drunkard, or to any person under the age of twenty-one years;

(3) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any non-intoxicating beer except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor;

(4) For any brewer or distributor to transport or deliver non-intoxicating beer to any retail licensee on Sunday;

(5) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail, or to offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers; provided, that nothing contained herein shall prohibit a distributor from offering for sale or renting tanks of carbonic gas;

(6) For any licensee to transport, sell, deliver or purchase any non-intoxicating beer or product of the brewing industry upon which there shall appear a label or other informative data which in any manner refers to the alcoholic content of such beer or product of the brewing industry, or upon the label of which there appears the word or words "strong," "full strength," "extra strength," "prewar strength," "high test" or other similar expressions bearing upon the alcoholic content of such product of the brewing industry, or which refers in any manner to the original alcoholic strength, extract or balling proof from which such beverage was produced, except that such label shall contain a Statement that the alcoholic content thereof does not exceed three and two-tenths percent by weight;

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

(8) For any licensee except the holder of a license to operate a private club issued under the provisions of West Va. Code Article 60-7, to possess a federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks;

(9) For any licensee to obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times; provided, that provisions of this subdivision shall not apply to the premises of a Class B retailer or to the premises of a private club licensed under the provisions of West Va. Code Article 60-7;

(10) For any licensee to manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith; provided, that the prohibitions contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of article 7, chapter 60 of the Code of West Virginia;

(11) For any licensee to print, paint or place upon the door, window or in any other public place in or about the premises, the word "saloon" or word of similar character or nature, or for the word "saloon" or similar words to be used in any advertisement by the licensee;

(12) For any retail licensee to sell or dispense non-intoxicating beer purchased or acquired from any source other than a licensed distributor or brewer under the laws of this State;

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

(14) For any person whose State license has been revoked, as provided in West Va. Code Article 11-16, to obtain employment with any retailer within the period of one year from the date of such revocation, or for any retailer to employ knowingly any such person within such time;

(15) For any distributor to sell, possess for sale, transport or distribute non- intoxicating beer except in the original container;

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

(17) For any Class B retailer to permit the consumption of non-intoxicating beer upon his licensed premises;

(18) For any licensee, his servants, agents or employees, or for any licensee by or through such servants, agents or employees, to allow, suffer or permit any person under the age of eighteen years to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision shall not apply where such person under the age of eighteen years, is in, on or upon such premises in the immediate company of his parent, or where and while such purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on such premises.

Any person who violates any provision of this section shall, upon conviction, be punished for each such offense by a fine of not less than twenty-five dollars nor more than five hundred dollars, or imprisoned for not more than thirty days, or by both such fine and imprisonment in the discretion of the court.

(i) Revocation or Suspension of License.

(1) The City Council shall have the right to revoke or suspend the license of any licensee under this article:

A. For any of the reasons and upon any grounds declared to be unlawful by subsection (h) hereof; or

B. For any reason or ground upon which a license might have been refused in the first instance had the facts at the time of issuance of such license been known to the City Council.

(2) In addition to the grounds for revocation or suspension of a license above set forth, conviction of the licensee of any offense constituting a violation of the laws of this City or State or of the United States regarding non-intoxicating beer or alcoholic liquor shall be mandatory grounds for revocation or suspension of a license.

(j) Hearings.

(1) No such revocation or suspension shall be made by the City Council unless and until a hearing shall be held after ten days notice to the licensee of the time and place of such hearing, which notice shall contain a Statement or specification of the charges, grounds, or reasons for such proposed contemplated action, and which shall be served upon the licensee as other notices, or by registered mail to the address for which license was issued; at which time and place, so designated in the notice, the licensee shall have the right to appear and produce evidence in his behalf, and to be represented by counsel.

(2) The City Council shall have authority to summon witnesses in the hearing before them. If, at the request of the licensee or on his motion, the hearing shall be continued and shall not take place on the day fixed by the City Council in the notice above provided for, then such licensee's license shall be suspended until the hearing and decision of the City Council, and in the event of revocation or suspension of such license, upon hearing before the City Council, the licensee shall not be permitted to sell beer pending an appeal as provided for by this article. It shall be unlawful for any person to continue to sell beer after his license has been suspended or revoked and, upon conviction thereof, he shall be punished as provided in subsection (h) hereof.

(3) The action of the City Council in revoking or suspending a license shall be subject to review upon certiorari by the circuit court of Greenbrier County when such licensee may be aggrieved by such revocation or suspension, in the manner as provided in West Va. Code 11-16-15a in action by the State Non-intoxicating Beer Commissioner to revoke or suspend a State license.

(4) All such hearings, upon notice to show cause why a license should not be revoked or suspended, before the City Council, shall be held in the City Building unless otherwise provided in such notice, or agreed upon between the licensee and the City Council.

(5) Whenever any licensee under this article has been convicted of an offense constituting a violation of this Code or other ordinance of this City regarding non-intoxicating beer or alcoholic liquor, the Recorder shall forward to the West Virginia Non-intoxicating Beer Commissioner a certified copy of the order or judgment of conviction.

(k) Re-issuance of License after Revocation. No license shall be issued to any person who has formerly held a license under the provisions of this article which has been revoked by the City Council or by a court or officer having competent jurisdiction within a period of two years from the date of such revocation; nor shall any license be issued hereunder to any person who was an officer or stockholder of a corporation whose license was revoked as aforesaid, nor to any person who was a member of a partnership or association whose license was revoked as aforesaid, nor to the wife or husband of any person whose license was revoked as aforesaid, within said period of two years from the date of revocation; nor shall any license be issued to any corporation having a stockholder or director who has had a license revoked as aforesaid, within such period of two years from the date of revocation of such person's license.

741.03 PRIVATE CLUBS.

(a) License Required. No licensee authorized by the State of West Virginia to sell alcoholic liquors as provided by Articles 60-7 and 60-8 of the Code of West Virginia shall do so within the

corporate limits of the City without first having obtained a City license issued by the City Recorder as hereinafter provided in this article.

(b) Application; Information Required; Fee.

(1) Application for a license to operate a private club shall be made on such forms as may be prescribed by the City Recorder and shall include:

- A. The name of the applicant;
- B. If such applicant be an unincorporated association, the names and addresses of the members of its governing board;
- C. If such applicant be a corporation, the names and addresses of its officers and directors;
- D. The place at which such applicant will conduct its operations and whether such place is owned or leased by the applicant;
- E. The number of members of the applicant;
- F. The name or names of any national organizations with which the applicant is affiliated and the nature of such affiliation;
- G. The size and nature of the dining and kitchen facilities operated by applicant; and
- H. Such other information as the City Recorder may reasonably require which shall include, but not be limited to, the criminal records, if any, of each member of applicant's governing board and its officers and directors who have been convicted of a felony or a crime involving moral turpitude.

(2) Such application shall be verified by each member of the governing board of the applicant if an unincorporated association or, if the applicant be a corporation, by each of its officers and all members of its board of directors. Such application shall be accompanied by the license fee hereinafter prescribed.

(c) Investigation; Issuance or Refusal of License.

(1) Upon receipt of the application referred to in subsection (b) hercof together with the accompanying license fee hereinafter set out, the City Recorder and, at the Recorder's request, his duly authorized representatives may conduct such investigation as the Recorder may deem necessary to determine the accuracy of the matters contained in such application. The Police Department and all duly employed members thereof are hereby designated as authorized representatives of the City Recorder and are hereby directed to make such investigation as the Recorder may direct to determine the accuracy of the matters contained in any such application. A written report of every such investigation shall be attached to the application which it concerns and shall be maintained as a part of the permanent records of the City. The City Recorder shall withhold the granting or refuse to grant such license for a period not to exceed thirty days. If it shall appear that such applicant is a bona-fide private club, of good reputation in the City and that there is no false Statement contained in such application, the Recorder shall issue a license authorizing the applicant to sell alcoholic liquors within this City, and otherwise shall refuse to issue such license.

(2) Upon refusal to issue such license, the City Recorder shall promptly notify the applicant, in writing, of the reasons for such refusal and such refusal shall be final unless a hearing is requested. When such refusal becomes final, the Recorder shall forthwith refund to the applicant the fee accompanying his application and shall promptly advise the Commissioner, in writing, of his reasons for denying the application.

(3) Any license issued pursuant to an application received hereunder shall authorize the licensee to sell alcoholic liquors at only the one location specified in the license.

(4) Any license issued hereunder shall expire on the 30th day of June next following the date of issuance and may be renewed upon the same showing as required for the issuance of the initial license, together with the payment of fees hereinafter prescribed.

(5) A license issued under the provisions of this article shall not be transferable with regard to either licensee or location.

(6) The City Recorder shall deliver to the licensee of any license issued hereunder a copy of this article and shall advise the licensee to fully acquaint himself with the provisions thereof.

(d) Annual License Fee; Partial Fee.

(1) The annual license fee for a license issued under the provisions of this article to a fraternal or veterans organization or a nonprofit social club shall be three hundred seventy-five dollars.

(2) The annual license fee for a license issued under the provisions of this article to a private club other than a private club of the type specified in subsection (d)(1) hereof shall be five hundred dollars if such private club has less than one thousand members and one thousand two hundred fifty dollars if such private club has one thousand or more members.

(3) The fee for any such license issued following the first day of January of any year and to expire on the thirtieth day of June of such year shall be one-half of the annual license fee prescribed by subsections (d)(1) and (2) hereof.

(e) Wine Retailers and Distributors.

(1) The annual license tax upon distributors and retailers of wine within the City limits of Lewisburg, and to such end, after the effective date of this article, no person may engage in business in the capacity of distributor or retailer of wine as provided by Chapter 60, Article 8 of the West Virginia Code of 1931, as last amended, within the corporate limits of the City, without first obtaining a license from the City, nor shall a person continue to engage in any such activity after his license has expired, been suspended or revoked. No person may be licensed in more than one of such capacities at the same time.

(2) The City shall collect an annual fee for license issued under this section as follows:

A. Twenty-five hundred dollars per year for a distributor's license.

B. One hundred fifty dollars per year for a retailer's license.

(3) The license period shall begin on the first day of July of each year commencing with July 1, 1981, and ending on the thirtieth day of June of the following year, and if the initial license is granted for less than a year, the fee shall be computed in proportion to the number of quarters remaining in the fiscal year, including the quarter in which application is made.

(4) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

(5) A copy of this article imposing the tax shall be certified by the Mayor to the West Virginia Alcohol Beverage Commission and to the Tax Commissioner.

(f) Certain Acts Prohibited; Penalties.

(1) It shall be unlawful for any licensee, or agent, employee or member thereof on such licensees' premises to:

A. Sell or offer for sale any alcoholic liquors other than from the original package or container;

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

C. Sell, give away or permit the sale of, gift to or the procurement of any alcoholic liquors, for any minor, mental incompetent or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs;

D. Sell, give or dispense alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of 3:00 a.m. and 1:00 p.m. on any Sunday except as provided under Section 741.01h;

E. Permit the consumption by or serve to, on the licensed premises any alcoholic liquors, covered by this article, to any person under the age of twenty-one years;

F. With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

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

H. Violate any reasonable rule or regulation of the State Alcohol Beverage Control Commissioner.

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

(3) Any person who violates any of the foregoing provisions, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the County Jail for a period not to exceed thirty days, or by both fine and imprisonment.

(g) Revocation or Suspension of License.

(1) The City Recorder may on his own motion, or shall on the sworn complaint of any person, conduct an investigation or cause an investigation to be conducted by his duly authorized representatives to determine if any provisions of this article have been violated by any licensee. A written report of any such investigation shall be attached to the application which it concerns and shall be maintained as a part of the permanent records of the City. The City Recorder shall revoke any licensee's license if he finds that such licensee has violated any provision of this article, or if he finds the existence of any ground on which a license could have been refused, if such licensee were then applying for a license. Upon final conviction of a licensee, or any employee thereof acting within the scope of his employment, of any violation of any Ordinance of this City regarding the regulation and control of alcoholic liquors, gambling, prostitution or the sale, possession or distribution of narcotics or dangerous drugs, the City Recorder shall forthwith revoke the licensee's license. Such revoked license shall not be reissued or re-instated for a period of one year from the date of such revocation. The location used by the licensee whose license shall have been revoked shall not be used or occupied by any other licensee during said one year period, and the City Recorder shall not issue a new license to any applicant to use said premises during the period of one year from the date of revocation.

(2) Whenever the City Recorder shall refuse to issue a license, or shall revoke a license, he shall cause a notice, in writing, stating the reasons for such action, to be served in person or by certified mail, return receipt requested, on the licensee or applicant, and shall immediately advise the State Alcohol Beverage Control Commissioner of such action and the reasons therefore, in writing.

(3) Any applicant or licensee, as the case may be, adversely affected by such action by the City Recorder shall have a right to a hearing thereon before the City Council; provided, that demand in writing for such hearing is served upon the City Recorder, within ten days following the receipt by such applicant or licensee of said certified copy of said notice. The service of such demand for a hearing upon the City Recorder shall operate to suspend the execution of the action with respect to which a hearing is being demanded.

(4) The City Recorder shall immediately notify City Council that such demand for hearing has been served and the City Council shall set a date for such hearing, the hearing to be held within thirty days after receipt of such demand by the Recorder, and shall cause the person demanding the hearing to be notified thereof. At such hearing the City Council shall hear evidence and thereafter shall, by resolution carried by a majority of the City Council, affirm,

modify or vacate the action with respect to which such hearing was held, which resolution shall be final unless vacated or modified upon Judicial review thereof.

(h) License for the Sale of non-Intoxicating Beer. Notwithstanding any other provision of this Code or other Ordinance of this City to the contrary, no licensee shall be prohibited from obtaining a license for the sale of non-intoxicating beer under the provisions of West Va. Code Article 11-16 because such licensee sells alcoholic liquors, permits the consumption of alcoholic liquor on his premises, or is the holder of a federal tax stamp permitting the sale of such alcoholic liquor.

First Reading: July 12, 2016

Second Reading: July 19, 2016



John Manchester, Mayor

Attest:



Shannon Beatty, CMC, Recorder

Please use this page to report progress on each **non-tax related initiative** included in your Home Rule Application. Each non-tax related initiative must have a separate page.

Initiative: On-Spot Citations	
Category of Issues Addressed (check all that apply)	
<input type="checkbox"/> Organization	<input checked="" type="checkbox"/> Administration
<input type="checkbox"/> Personnel	<input type="checkbox"/> Other
Was this non-tax initiative a part of your original plan application <input checked="" type="checkbox"/> or a plan amendment <input type="checkbox"/> ?	
Has the ordinance(s) needed to implement this initiative been enacted? <input checked="" type="checkbox"/> Yes 1/2 <input type="checkbox"/> No	
If yes, when was the ordinance enacted? 1st reading passed by Council 11/15/16. 2nd reading scheduled for approval on 12/20/16.	
If no, please describe challenges faced in enacting the related ordinance(s)	
<p>SUCSESSES – In the space below, please provide a brief narrative highlighting successes realized through the implementation of this initiative and any metrics used to track performance.</p>	
<p>LESSONS LEARNED – In the space below, please provide a brief narrative highlighting lessons learned during implementation of this revenue initiative that would benefit other municipalities.</p>	

Ordinance 267

Councilmember Baldwin introduced the following ordinance and moved for its adoption, which motion was seconded by Councilmember White, the ordinance being in the following words and figures:

“AN ORDINANCE TO ENACT ARTICLE 1141 OF THE OFFICIAL CODE OF THE CITY OF LEWISBURG, GREENBRIER COUNTY, WEST VIRGINIA, PURSUANT TO THE AUTHORITY GRANTED TO THE CITY OF LEWISBURG UNDER THE WEST VIRGINIA CODE §8-1-5A (THE HOME RULE PILOT PROGRAM ACT) AND PURSUANT TO THE PROVISIONS OF THE CITY OF LEWISBURG HOME RULE PLAN APPROVED BY THE MUNICIPAL HOME RULE BOARD.”

BE IT ORDAINED by the City Council of Lewisburg, Greenbrier County, West Virginia, that Article 1141, ALTERNATIVE ENFORCEMENT OF EXTERNAL SANITATION AND COMMON NUISANCES of the official Code of the City of Lewisburg, Greenbrier County, West Virginia, be, and it is, hereby enacted to read as follows:

ARTICLE 1141 – ALTERNATIVE ENFORCEMENT OF EXTERNAL SANITATION AND COMMON NUISANCES

1141.01 – AUTHORITY

This article is enacted pursuant to the authority granted to the City of Lewisburg under West Virginia Code § 8-1-5a (the Home Rule Pilot Program Act) and pursuant to the provisions of the City of Lewisburg Home Rule Plan approved by the municipal home rule board on April 4, 2016.

1141.02 – PURPOSE AND APPLICABILITY

(1) The purpose of this section is to provide additional and alternative methods and processes to enforce the provisions of the Codified Ordinances of the City of Lewisburg regarding exterior sanitation and common nuisances related to property located within the City in a fair, speedy and inexpensive manner, and to improve compliance with such provisions. To the extent that this article conflicts with an existing ordinance identified below, this Article 1141 shall be controlling.

(2) This section shall be in addition to those methods and processes otherwise contained in the Codified Ordinances of the City of Lewisburg and shall be applied at the discretion of the enforcement officer enforcing the provisions of this section. (3) This section shall apply to the following exterior sanitation and common nuisance violations contained in the Codified Ordinances of the City of Lewisburg: (a) Prohibited Nuisances (City Code Article 1111.02); (b) Maintenance of Premises (City Code Article 1111.03); (c) Violations and Penalties for Building Code (City Code Article 1101.03); (d) Public health concerns.

(4) Any and all planning, zoning, building, and law enforcement officers shall have authority to enforce the provisions of this section and shall be referred to herein collectively as enforcement officials.

1141.03 – INVESTIGATIONS

Upon receipt of information indicating the likelihood of a violation of any provision of the Codified Ordinances of the City of Lewisburg regarding external sanitation or common nuisance, the enforcement official shall investigate the facts and may, to the extent permitted by law, make an inspection of the premises.

1141.04 – ISSUANCE OF CITATIONS

(1) If an investigation reveals that a code violation exists, the enforcement official may issue a citation for such violation to the person having either ownership or control of any land,

building, structure, sign, property, licensed or permitted business or operation which is in violation, and shall order that violation to be corrected.

(2) A citation may be served by personal or substituted service in accordance with the West Virginia Rules of Civil Procedure, either by delivering the notice to the person in violation personally, or by delivering the notice to a member of the person's family who is above the age of 16 years and by advising such person of the purpose of the citation. Proof of personal service shall be made at the time of service by a written declaration executed by the enforcement official effective service and shall declare the time, date and manner by which service was made. If personal service cannot be effectuated, the enforcement official may send the citation to the person via certified mail, return receipt requested, to the person's last known address. If the return receipt is not returned, a citation shall be conclusively presumed to have been served if it is also sent by regular mail, postage prepaid, which is not returned as undeliverable by the postal service.

The citation shall be in writing and shall contain the following:

(a) The date the citation was issued; (b) The name and address of the person(s) charged with the violation; (c) The section of the ordinance that has been violated; (d) The nature of the violation; (e) The place and time the violation occurred; (f) The amount of the fine imposed for the violation; (g) The name, address and telephone number of the enforcement official issuing the citation; (h) The time period allowed for the violation to be corrected. The time period allowed shall take into consideration the threat posed by the violation to the health, safety and welfare of the public and the nature of the work required to correct the violation, provided that no such time period for correction shall be less than ten days; and (i) The name, address and telephone number of the office of the city collector, where fines are to be paid, and of the municipal court, where citations may be appealed.

1141.05 – PENALTIES

Any person issued a citation pursuant to section 1141.04 shall be punished by a fine as follows: within any 12-month period, \$100.00 for the first citation, \$200.00 for the second citation, \$300.00 for the third citation, and \$500.00 for each citation thereafter.

1141.06 – NONPAYMENT OF FINES

All fines imposed by citations under this section shall be due within ten days of service of the citation. The failure to pay when due any fine imposed under this section shall constitute a failure to appear or otherwise respond under W. Va. Code § 8-10-2b(c) and may result in notification to the department of motor vehicles.

1141.07 – APPEAL

(1) Issuance of a citation under the provisions of this section shall be deemed to be prima facie evidence of the violation indicated on the face of the citation. As such, any person who is issued a citation shall pay the fine indicated for the violation, as set forth in section 1141.05, in full to the office of the municipal court clerk within ten days of the service of the citation. Any person alleging that he or she was improperly issued such citation may, within ten days of service of such citation, file a petition for appeal of the citation or payment thereof, along with the required bond, with the municipal court clerk in accordance with the following:

(a) In order to properly and timely appeal his or her citation, within ten days of service of the citation, the alleged violator shall pay the required amount of the applicable fine in full to the municipal court clerk, which amount will be held by the municipal court as bond pending evidentiary hearing before, and

resolution of the case by, the municipal court; the municipal court clerk shall issue a receipt to the alleged violator showing the amount of the bond paid. In addition to the bond, the alleged violator shall file with the municipal court clerk a petition for appeal of the citation. If any petition for appeal filed in accordance with this section is not timely filed or is not accompanied with the required bond, the alleged violator shall be deemed to have waived his or her right to appeal the citation, and such petition shall be summarily denied as untimely filed; provided, however that nothing set forth hereinabove shall prevent the municipal judge from finding, upon proper application and showing, that an alleged violator suffers from a financial hardship, and, as a result, waiving the requirement that the bond be posted as a prerequisite to filing a petition for appeal.

(b) Any petition for appeal filed with the municipal court clerk must be in writing, on the form to be provided by the municipal court clerk, and must be signed by the alleged violator affirming that the contents of the petition are true and accurate to the best of the alleged violator's knowledge at that time. Such petition for appeal shall state the facts and reasons in support of the petition. Upon filing any such petition for appeal with the municipal court clerk, the alleged violator shall serve a copy of the petition and the receipt showing proof of bond or waiver upon the city attorney.

(2) Upon the filing of any petition for appeal with the municipal court clerk, the clerk or his or her designee shall place the case on the municipal court docket, set the case for evidentiary hearing within 30 days from the date of the filing of the petition for appeal, provide a notice of hearing to the alleged violator, and forward a copy of the petition to the enforcement officer. Upon receipt of the petition, the enforcement office shall cause a copy of the citation at issue to be forwarded to the municipal court clerk who shall file it as the original complaint alleging the violation indicated therein.

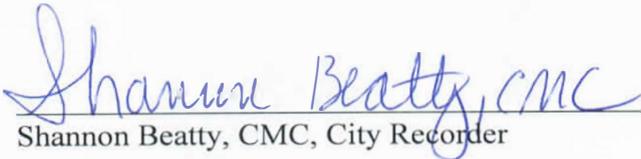
(3) The municipal court shall treat the citation itself as the original complaint before the court, and shall treat it as prima facie evidence of the violation alleged therein. At the

close of all of the evidence presented at the hearing on the petition for appeal, should the municipal court judge find against the alleged violator, the bond posted by the alleged violator shall be applied as payment for the fine imposed for the violation. In the event the municipal court judge finds that a violator suffers from financial hardship, the municipal court judge may permit alternative sentencing. Should the court find in favor of the alleged violator, the bond shall be refunded to the alleged violator by the municipal court clerk, and the citation shall be dismissed.

The Ordinance shall be enforced from and after its final passage.

November 15, 2016 Date Passed 1st Reading

_____ Date Passed 2nd Reading


Shannon Beatty, CMC, City Recorder

Ordinance 268

Councilmember Etten introduced the following ordinance and moved for its adoption, which motion was seconded by Councilmember White, the ordinance being in the following words and figures:

“AN ORDINANCE TO ENACT ARTICLE 106 OF THE OFFICIAL CODE OF THE CITY OF LEWISBURG, GREENBRIER COUNTY, WEST VIRGINIA, PURSUANT TO THE AUTHORITY GRANTED TO THE CITY OF LEWISBURG UNDER THE WEST VIRGINIA CODE §8-1-5A (THE HOME RULE PILOT PROGRAM ACT) AND PURSUANT TO THE PROVISIONS OF THE CITY OF LEWISBURG HOME RULE PLAN APPROVED BY THE MUNICIPAL HOME RULE BOARD.”

BE IT ORDAINED by the City Council of Lewisburg, Greenbrier County, West Virginia, that Article 106, CONVEYANCE OF SURPLUS PROPERTY of the official Code of the City of Lewisburg, Greenbrier County, West Virginia, be, and it is, hereby enacted to read as follows:

ARTICLE 106 -- CONVEYANCE OF SURPLUS PROPERTY

106.01 -- AUTHORITY

This article is enacted pursuant to the authority granted to the City of Lewisburg under West Virginia Code § 8-1-5a (the Home Rule Pilot Program Act) and pursuant to the provisions of the City of Lewisburg Home Rule Plan approved by the municipal home rule board on April 4, 2016.

106.02 -- PURPOSE AND APPLICABILITY

- (1) The purpose of this section is to provide for the efficient and cost effective disposition of the City's surplus property without the time and expense of advertising and public auction required by W. Va. Code § 8-12-18(b).
- (2) This section shall be applicable to the sale of “surplus property,” as defined in Article 106.03 below.
- (3) This section shall be in addition to those methods and processes otherwise contained in the West Virginia Code and shall be applied at the discretion of the City.

106.03 -- SURPLUS PROPERTY DEFINED

For the purposes of this article, “surplus property” is defined as: property, excluding real property, now owned or in the future acquired by the City that has become obsolete or unusable or is not being used or should be replaced, as determined by the City Administrator.

106.04 – CONVEYANCE OF SURPLUS PROPERTY

- (1) The City may sell its surplus property valued in excess of \$1,000.00 fair market value, for fair and adequate consideration, without adherence to the procedures set forth in W. Va. Code § 8-12-18(b) if the sale is made as follows:
 - (a) The property may be advertised and sold via an online auction site which has been approved by the City Council for such purposes; or
 - (b) The property may be sold via a request for sealed bids upon such terms and conditions as determined by the City Council, provided, that prior to making any sale via sealed bids, the terms and conditions along with a brief description of the property to be sold shall be published as a Class I legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1, *et seq.*
- (2) The provisions of this Article are meant to be an alternative method for the disposition of surplus property. Nothing contained in this Article shall prohibit the City from utilizing, at the discretion of the City, the procedures set forth in W. Va. Code § 8-12-18 for the sale, lease or disposition of other municipal property.

November 15, 2016 Date Passed 1st Reading

_____ Date Passed 2nd Reading


Shannon Beatty, CMC, City Recorder