

WEST VIRGINIA MUNICIPAL HOME RULE BOARD

MEETING MINUTES

MONDAY, JULY 11, 2016

A meeting of the West Virginia Municipal Home Rule Board was held at 10:00 a.m. on Monday, July 11, 2016, at the Public Safety Building in Morgantown, West Virginia.

The following members were present:

Chris Fletcher, Member
Joshua Jarrell (designee for WV Development Office Executive Director Keith Burdette)
Brian Jones, Member
Robert Kiss (designee for the Honorable Earl Ray Tomblin)
Floyd (Kin) McKinley Sayre III, Member

The following members were absent:

Craig Blair, West Virginia Senate
Gary Howell, West Virginia House of Delegates

Others present:

Dodie Arbogast, City of Weston
James Bailey, West Virginia Legislature
Mark Baldwin, City of Martinsburg
Kassie Ball, City of Charleston
Anoop Bhasin, Alcohol Beverage Control Administration
Joshua Cline, City of Bluefield
Steve Connolly, West Virginia Fire Marshal Office
John A. DeStefano Jr., City of Follansbee
Kristin Doppleman, City of Weston
Lora Dyer, Office of the State Auditor
Susan Economou, City of Charleston
Paul Ellis, City of Charleston
Martin Howe, City of Clarksburg
John Manchester, City of Lewisburg
Beth McCoy, West Virginia Municipal League
Ronald Moats, Alcohol Beverage Control Administration
Michael Moore, City of South Charleston
Gregory A. Morgan, City of Clarksburg
Hoy Murphy, West Virginia Department of Commerce
Bryan Reed, City of Weston
Martin Shaffer, Resident, City of Clarksburg
Randy L. Spellman, City of Bridgeport
Julia Spelsberg, City of Weston
Stuart Stickel, Office of the State Auditor
Kenneth E. Tyree Jr., West Virginia Fire Marshal Office

The meeting was called to order by Chair Kiss. It was reported that notice of the meeting was lawfully given, a quorum was present, and the meeting was convened.

A motion was made by Kin Sayre to approve the minutes of the April 4, 2016, meeting. The motion was seconded by Brian Jones and approved. Members Joshua Jarrell and Chris Fletcher abstained from voting, as they were not in attendance on April 4.

Chair's Report

Chair Kiss welcomed guests, and charged staff with preparing a response to the City of Beckley's correspondence dated June 14 outlining the process, if any, for repealing a Home Rule Board decision.

Old Business

- **Clarksburg's** City Attorney Greg Morgan once again reviewed their proposed plan **amendment** permitting local certification and supervision of code enforcement officials and inspectors, as well as exempting the city from the code official/inspector licensing authority delegated to the State Fire Commission under existing statutory law. City personnel are tested and certified by the International Code Council (ICC), which also provides continuing education for individuals it certifies. Clarksburg would continue to adopt and follow the State Building Code, as defined by the State Fire Commission and the ICC.

Steve Connolly of the Fire Marshal's Office verified that Judge Bailey upheld Clarksburg's position. The decision is final and the Fire Commission did not appeal it. Next, he explained that the rules for Title 87 Series 7 are final. There is not a call for an amendment, and nothing is out for public comment. Similarly, he communicated that his agency did not anticipate changes to the Title 87 Series 7 rules for at least three or four years; this is due to the sun setting of all rules by the West Virginia Legislature. Lastly, Mr. Connolly advised the Board membership that the Fire Marshal's Office would oppose the exemption/plan amendment requested by Clarksburg, as with Bridgeport's plan amendment approved by the Home Rule Board at their April 4 meeting.

A representative from the Harrison County Landlord Association, Martin Shaffer, spoke in opposition of this exemption/plan amendment being granted to the City of Clarksburg alleging racketeering and other illegal activities linked to grants/loans.

The Board confirmed that the City of Clarksburg: 1) provided notice at least 30 days prior to their public hearing related to their plan amendment by a Class II legal advertisement; 2) made the proposed plan amendment available for public inspection

at least 30 days prior to their public hearing; 3) held their public hearing; 4) adopted an ordinance authorizing the submission of the proposed plan amendment to the Board; 5) provided comments offered during their public hearing to the Board; and, 6) furnished to the Board a letter from an attorney licensed to practice law in West Virginia certifying that the proposed plan amendment complies with W. Va. Code §8-1-5a.

Kin Sayre made a motion to approve Clarksburg's amendment to their current home rule plan. The motion was seconded by Joshua Jarrell. Chair Kiss recused himself from the vote; he also serves as chair on behalf of the Governor on the West Virginia Housing Development Fund. He was concerned his vote on the matter could be a factor in future federal litigation of another issue. Brian Jones voted against approval of the proposed plan amendment. The motion passed.

New Business

- The proposed home rule **plan** for the City of **Weston** was outlined by Mayor Julia Spelsberg.

The Board confirmed that the City of Weston: 1) provided notice at least 30 days prior to their public hearing related to their plan by a Class II legal advertisement; 2) made the proposed plan available for public inspection at least 30 days prior to their public hearing; 3) held their public hearing; 4) adopted an ordinance authorizing the submission of the proposed plan to the Board; 5) provided comments offered during their public hearing to the Board; and, 6) furnished to the Board a letter from an attorney licensed to practice law in West Virginia certifying that the proposed plan complies with W. Va. Code §8-1-5a.

Deputy State Auditor Stuart Stickel addressed various items summarized in Weston's proposed plan, and he confirmed that the Office of the Auditor would honor Weston's request for a particular auditor, if within the limits of their regulations/guidelines.

No other comments were received from representatives of state government, trade associations, or the public.

After the Board heard additional information about the furnished estimates for the sales and use tax, a motion was made by Kin Sayre to approve the plan under the Municipal Home Rule Program. Moreover, the City of Weston agreed to select a certified public accountant from the list of approved firms maintained by the Office of the State Auditor. The motion was seconded by Chris Fletcher and carried.

- **Follansbee's** City Manager John DeStefano answered a few questions concerning their proposed home rule **plan** to impose a one percent municipal sales, services, and use tax and reduce its B&O tax.

The Board confirmed that the City of Follansbee: 1) provided notice at least 30 days prior to their public hearing related to their plan by a Class II legal advertisement; 2) made the proposed plan available for public inspection at least 30 days prior to their public hearing; 3) held their public hearing; 4) adopted an ordinance authorizing the submission of the proposed plan to the Board; 5) provided comments offered during their public hearing to the Board; and, 6) furnished to the Board a letter from an attorney licensed to practice law in West Virginia certifying that the proposed plan complies with W. Va. Code §8-1-5a.

No disapproving comments were received from representatives of state government, trade associations, or the public.

Kin Sayre made a motion to accept the City of Follansbee in the Municipal Home Rule Program. The motion was seconded by Chris Fletcher and carried.

- The City of **Clarksburg** responded to inquiries about their proposed home rule plan **amendment** permitting certain holders of West Virginia Alcohol Beverage Control Administration Class A licenses to serve alcohol beginning at 10 a.m. on Sunday within the city limits of Clarksburg. It was noted by the Clarksburg meeting attendees that Harrison County has not yet taken any steps to put the "Sunday Brunch" referendum on their November ballot.

Not being present at the April Board meeting, Board Member Chris Fletcher stated that he was not in agreement that the "Sunday Brunch" initiative is appropriate for the home rule approach. He voiced his opinion that the issuance of a liquor license by the State and the State's regulation of hours of operation or time of sale under a liquor license does not prevent a municipality from carrying out its municipal duties and responsibilities in the most cost-efficient, effective or timely manner because the municipality is not engaged in the issuance of the license or regulating the hours of operation or the time of sale. If the municipality was authorized to issue a liquor license, but restricted by the State concerning hours of operation or time of sale, then changes to the hours of operation or time of sale would arguably be a home rule initiative. Nevertheless, he is not in opposition of the "Sunday Brunch" proposal(s), and would vote accordingly since a precedent has been set by the Board.

Brian Jones cited that the “Sunday Brunch” proposal does not do anything not already enacted this past year by the West Virginia Legislature except for the county referendum. With due respect, he further asserted that the subject proposal allowed the municipality, rather than the county, to have control over their citizenry following the spirit of the “local level” home rule law.

At the same time, Commissioner Moats of the Alcohol Beverage Control Administration (ABCA) alluded there could be complications since no county-wide election was slated for Harrison County. The agency is monitoring the concerns as they arise. In spite of this, Commissioner Moats disclosed that the ABCA did not intend to object to any upcoming, limited city “Sunday Brunch” proposals, but rather will monitor the situation, in particular the counties that decide not to seek a public election on the matter.

Fletcher noted his opinion is that the passage of a county referendum to permit “Sunday Brunch” sales within that county does not authorize the county to adjust the permitted time of sale. Rather the passage of the referendum authorizes the ABCA to adjust its enforcement of the time of sale within that county.

The Board confirmed that the City of Clarksburg: 1) provided notice at least 30 days prior to their public hearing related to their plan amendment by a Class II legal advertisement; 2) made the proposed plan amendment available for public inspection at least 30 days prior to their public hearing; 3) held their public hearing; 4) adopted an ordinance authorizing the submission of the proposed plan amendment to the Board; 5) provided comments offered during their public hearing to the Board; and, 6) furnished to the Board a letter from an attorney licensed to practice law in West Virginia certifying that the proposed plan amendment complies with W. Va. Code §8-1-5a.

No disapproving comments were received from representatives of state government, trade associations, or the public.

Kin Sayre made a motion to approve the amendment presented by the City of Clarksburg. No members opposed. The motion was **seconded** and carried.

Commented [CMF1]: Who seconded this motion?

- The plan **amendment** for the City of **Bluefield** was presented by Assistant City Manager Joshua Cline. In addition to the “Sunday Brunch” implementation, the city requests they be allowed to waive the distance requirements and grant proper policing authorities to, among other actions, investigate underage drinking in private clubs, and enforce set last call and closing times of such clubs. Mr. Cline reported that Mercer County has no plans to put the “Sunday Brunch” poll on their November election ballot.

The Board devoted considerable discussion to topics such as 4th amendment protections, privacy issues, violations of the last call and closing times, criminal citations, an attorney general's opinion/guidance in the 70s, etc.

Being a very pro home rule individual, Kin Sayre declared that the statute does not prohibit the aforementioned proposed initiatives. Thus, the Home Rule Board should allow the City of Bluefield to explore and develop solutions, as long as they are not violating the West Virginia Constitution.

Chair Kiss informed the membership that the ABCA takes a very different view as to any above and beyond "Sunday Brunch" proposals. And, Board Member Brian Jones voiced his opposition to Bluefield's possible desire to set closing times for private clubs.

The Board confirmed that the City of Bluefield: 1) provided notice at least 30 days prior to their public hearing related to their plan amendment by a Class II legal advertisement; 2) made the proposed plan amendment available for public inspection at least 30 days prior to their public hearing; 3) held their public hearing; 4) adopted an ordinance authorizing the submission of the proposed plan amendment to the Board; 5) provided comments offered during their public hearing to the Board; and, 6) furnished to the Board a letter from an attorney licensed to practice law in West Virginia certifying that the proposed plan amendment complies with W. Va. Code §8-1-5a.

No further disapproving comments were received from representatives of state government, trade associations, or the public.

A motion was made by Kin Sayre to approve the plan amendment as presented by the City of Bluefield. The motion was seconded. Member Brian Jones and Chair Kiss voted nay. Chair Kiss stated it was a three to two vote and passed.

Commented [CMF2]: Who seconded this motion?

- Paul Ellis, attorney for the City of **Charleston**, briefly presented their "Sunday Brunch" plan **amendment**. Referring to Board Member Chris Fletcher's observations regarding "Sunday Brunch" not being appropriate for a home rule approach, Mr. Ellis respectfully disagreed declaring it is the city's duty and responsibility to be progressive, enhance the experience of leisure travelers, pursue ways to stop the population decline, increase tourism, turn Charleston into a destination and viable hub, etc. and that "Sunday Brunch" is clearly not outside the scope of the Home Rule Pilot Program. Lastly, it was reported by Mr. Ellis that Kanawha County has no plans to put the "Sunday Brunch" referendum on their November election ballot.

The Board confirmed that the City of Charleston: 1) provided notice at least 30 days prior to their public hearing related to their plan amendment by a Class II legal advertisement; 2) made the proposed plan amendment available for public inspection at least 30 days prior to their public hearing; 3) held their public hearing; 4) adopted an ordinance authorizing the submission of the proposed plan amendment to the Board; 5) provided comments offered during their public hearing to the Board; and, 6) furnished to the Board a letter from an attorney licensed to practice law in West Virginia certifying that the proposed plan amendment complies with W. Va. Code §8-1-5a.

Without restating the position of the ABCA, no further disapproving comments were received from representatives of state government, trade associations, or the public.

A motion was made by Chris Fletcher to approve the amendment presented by the City of Charleston. The motion was seconded by Kin Sayre and carried unanimously.

- The proposed home rule “Sunday Brunch” plan **amendment** for the City of **Lewisburg** was quickly reviewed by John Manchester. In addition, Mr. Manchester expressed his gratitude to the Board for their many hours of volunteer service on the Home Rule Board. Further, he announced that due to public protest Greenbrier County would be placing the “Sunday Brunch” referendum on their election ballot this fall.

The Board confirmed that the City of Lewisburg: 1) provided notice at least 30 days prior to their public hearing related to their plan amendment by a Class II legal advertisement; 2) made the proposed plan amendment available for public inspection at least 30 days prior to their public hearing; 3) held their public hearing; 4) adopted an ordinance authorizing the submission of the proposed plan amendment to the Board; 5) provided comments offered during their public hearing to the Board; and, 6) furnished to the Board a letter from an attorney licensed to practice law in West Virginia certifying that the proposed plan amendment complies with W. Va. Code §8-1-5a.

No further disapproving comments were received from representatives of state government, trade associations, or the public.

A motion was made by Kin Sayre to approve the amendment presented by the City of Lewisburg. The motion was seconded by Chris Fletcher and carried unanimously.

- **Martinsburg** City Manager Mark Baldwin delivered the “Sunday Brunch” plan **amendment** for his city. It was affirmed that both Jefferson and Berkeley Counties would be holding a referendum on the “Sunday Brunch.”

The Board confirmed that the City of Martinsburg: 1) provided notice at least 30 days prior to their public hearing related to their plan amendment by a Class II legal advertisement; 2) made the proposed plan amendment available for public inspection at least 30 days prior to their public hearing; 3) held their public hearing; 4) adopted an ordinance authorizing the submission of the proposed plan amendment to the Board; 5) provided comments offered during their public hearing to the Board; and, 6) furnished to the Board a letter from an attorney licensed to practice law in West Virginia certifying that the proposed plan amendment complies with W. Va. Code §8-1-5a.

No further disapproving comments were received from representatives of state government, trade associations, or the public.

A motion was made by Kin Sayre to approve the amendment presented by the City of Martinsburg. The motion was seconded by Brian Jones and carried unanimously.

- The “Sunday Brunch” plan **amendment** for the City of **South Charleston** was presented by Michael Moore.

The Board confirmed that the City of South Charleston: 1) provided notice at least 30 days prior to their public hearing related to their plan amendment by a Class II legal advertisement; 2) made the proposed plan amendment available for public inspection at least 30 days prior to their public hearing; 3) held their public hearing; 4) adopted an ordinance authorizing the submission of the proposed plan amendment to the Board; 5) provided comments offered during their public hearing to the Board; and, 6) furnished to the Board a letter from an attorney licensed to practice law in West Virginia certifying that the proposed plan amendment complies with W. Va. Code §8-1-5a.

No further disapproving comments were received from representatives of state government, trade associations, or the public.

A motion was made by Kin Sayre to approve the amendment as furnished by the City of South Charleston. The motion was seconded by Chris Fletcher and carried unanimously.

Adjournment

Members were reminded of the next regularly scheduled meeting on October 3, 2016, in Morgantown. With no further business, a motion was made to adjourn the meeting. The motion was seconded and the meeting was adjourned at 12 noon.