

CITY OF MARTINSBURG
OFFICE OF THE MAYOR
232 NORTH QUEEN STREET · P.O. BOX 828
MARTINSBURG, WEST VIRGINIA 25402
PHONE (304) 264-2140



July 1, 2016

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

**RE: CITY OF MARTINSBURG AMENDED HOME RULE PLAN
JULY 11, 2016 HOME RULE BOARD MEETING**

Dear Ms. Browning:

At the special City Council meeting held on June 30, 2016, City Council approved the attached Amendment to the City of Martinsburg's Home Rule Plan.

Enclosed, please find the original and eight (8) copies of the Amended Plan. The City of Martinsburg requests that we be placed on the Municipal Home Rule Board Agenda for Monday, July 11, 2016.

If you have any questions or desire further information, please do not hesitate to contact me at 304-264-2149. The City of Martinsburg appreciates your cooperation in this matter.

Sincerely,


George Karos
Mayor

GK/djd

Cc: City Council
Mark S. Baldwin, City Manager
Kin Sayre, City Attorney
Mark B. Spickler, Finance Director
Mike Covell, City Engineer/Planning Director
Chief of Police, Maury Richards
Fire Chief, Paul E. Bragg

Enclosures



Municipal Home Rule Pilot Program Amendment To Approved Plan

APPLICATION CHECKLIST CITY OF MARTINSBURG

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

SECTION II: NARRATIVE	
Page No.	
4	Specific state laws, policies, acts, resolutions, rules or regulations that are preventing the municipality to carry out duties in the most cost effective, efficient, and timely manner.
4	Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.
4	Proposed solution(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include: <ul style="list-style-type: none"> 1) Proposed solution(s) in one of the five areas (tax/administrative/organization/personnel/other) 2) If revenue related, estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.

SECTION III: AFFIDAVITS	
Page No.	
5	Hearing Mandate Verification

6	Publication Mandate Verification
7	Ordinance Authorizing Submission of Plan
-	Fiscal Impact Worksheets/Formulas (if revenue related)
8	Attorney Opinion (application complies with statutory requirements)
10	State of West Virginia Fees Statement (none outstanding)

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Fiscal Impact Worksheets/Formulas (if revenue related)	
Attorney Opinion (application complies with statutory requirements)	
State of West Virginia Fees Statement (none outstanding)	

Municipal Home Rule Pilot Program Amendment To Approved Plan APPLICATION

Section I: Applicant Information

A. General Information	
Name of Municipality: City of Martinsburg, West Virginia	
Certifying Official: George Karos	Title: Mayor
Contact Person: Mark Baldwin	Title: City Manager
Address: 232 North Queen Street	
City, State, Zip: Martinsburg, West Virginia 25401	
Telephone Number: 304-264-2131	Fax Number: 304-264-2136
E-Mail Address: markbaldwin17@aol.com	
2010 Census Population: 17,513	
B. Municipal Classification	
<input type="checkbox"/> Class I <input checked="" type="checkbox"/> Class II <input type="checkbox"/> Class III <input type="checkbox"/> Class IV	
C. Category of Issues to be Addressed (please attach descriptions for applicable categories)	
Tax <input type="checkbox"/> Organization Administration <input type="checkbox"/> Personnel X <input type="checkbox"/> Other	

Section II: Narrative

See page 3

Section III: Affidavits

See page 5



The City of Martinsburg, West Virginia

Executive Summary

The City of Martinsburg is a Class II city located in Berkeley County in the Eastern Panhandle of West Virginia. Martinsburg is the regional hub for Jefferson, Berkeley and Morgan Counties.

The City of Martinsburg was accepted into the Home Rule Pilot Project by the Home Rule Board on October 6, 2016, The City has implemented many of the proposals from the original application.

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

Section II: Narrative

Introduction

At the heart of Berkeley County lies its county seat, the City of Martinsburg. This vibrant city offers the very best of modern living, while respecting its historic past. Recognized as the fastest growing city in the state, Martinsburg is not only a great place to live, but also a great place to do business.

Through several downtowny revitalization projects, the expansion of interstate-related commerce, economic development initiatives, transportation projects, and infrastructure modernization efforts, Martinsburg's leadership continually demonstrates its dedication to fostering community and economic development. This dedication continues to attract businesses, bring more jobs to the City and increase access to products and services. By building a strong economic foundation, Martinsburg continues to be a place that local residents love to call home.

Residents enjoy a wide variety of recreation, entertainment, and shopping opportunities, while benefiting from the city's close proximity to the major metropolitan areas of Washington, D.C. and Baltimore, Maryland. From annual festivals to numerous cultural events, recreation, and performing arts venues, Martinsburg truly offers something for everyone.

Mayor:

George Karos

City Council:

Gregg Wachtel – Councilmember at Large

Harriet Johnson – Councilmember at Large

Dennis J. Etherington – Councilmember, Ward 1

Kevin Knowles – Councilmember, Ward 2

Ken Collinson – Councilmember, Ward 3

Mark Baker – Councilmember, Ward 4

Jason W. Baker – Councilmember, Ward 5

City Manager: Mark S. Baldwin

Specific Problems and Solutions to be addressed by Martinsburg's Home Rule Plan

A. Regulate When Restaurants May Serve Alcohol to Become a Sunday Brunch Destination.

i. **Problem:** West Virginia Code prohibits restaurants and bars from serving alcohol before 1:00 p.m. on Sundays. However, nearby Maryland and Virginia permit sales of alcohol at least two hours earlier, at 11:00 a.m. Martinsburg is home to several dining establishments that lose significant business as patrons travel across state lines to enjoy alcoholic beverages with their Sunday brunches.

ii. **Authority:** W. Va. Code § 60-7-12(a)(5) prohibits any private club licensee, or agent, employee or member thereof, from selling beer, wine, or alcoholic liquor between the hours of 3:00 a.m. and 1:00 p.m. on Sundays. Further, W. Va. Code § 60-8-34 prohibits a private wine bed and breakfast or restaurant from selling wine between the hours of 2:00 a.m. and 1:00 p.m. on Sundays. W. Va. Code § 11-16-18(a)(1) provides that it shall be unlawful for any licensee to sell beer between 2:00 a.m. and 1:00 p.m. on Sundays (except that private clubs licensed under Article 7, Chapter 60 of the West Virginia Code shall operate within hours conforming with the hours of sale of alcoholic liquor). The Governor recently signed SB 298 that authorizes County Commissions to authorize a referendum to allow alcohol sales prior to 1 pm on Sunday.

iii. **Solution:** The City will enact an ordinance permitting any private club licensee or private wine bed and breakfast or restaurant to serve beer, wine, and alcoholic liquors after the hour of 10:00 a.m. on Sundays.

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

The above-mentioned solution will allow for sustained improvement to the City of Martinsburg.

AFFIDAVIT OF PUBLIC HEARING

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

I, Gena Long, having been duly sworn, do hereby state as follows:

1. I am over 18 years of age and am employed by the City of Martinsburg as the City Recorder.
2. A copy of the City of Martinsburg's proposed amendment to its Home Rule Plan, contained within its application to the WV Municipal Home Rule Pilot Program Phase II, was made available for public inspection at the Martinsburg City Hall, 232 North Queen Street, Martinsburg, West Virginia, each business day during regular business hours, beginning May 28, 2016 up to, and including June 30, 2016.
3. A public hearing was properly noticed and held at the aforementioned Martinsburg City Hall on the City of Martinsburg's proposed Home Rule Plan on June 30, 2016.

Further Affiant sayeth not.



Gena Long

Taken, subscribed and sworn to before me this 30th day of June, 2016

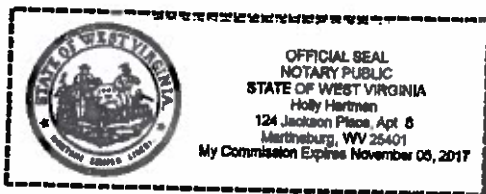
My commission expires:

Nov. 5, 2017



Notary Public

(SEAL)



**ORDER OF
PUBLICATION
IN THE MAGISTRAGE
COURT OF
BERKELEY COUNTY,
WEST VIRGINIA**

**L&L Ventures, LLC
PO Box 283
Highland, Md
20777-0283
Plaintiff
v.**

**Shaun Lamont Cashwell
& Gena Dunphy
80 Marie Lane, Lot #75
Martinsburg, WV 25405
Defendant**

**Civil Action No.
16-M02C-01641**

The object of the above
entitled action is a
wrongful occupation. A
court hearing has been
scheduled on Monday
June 27, 2016 at 2:00 PM.
And it appearing by an
affidavit filed in this action
that the defendants have
defaulted and it is ordered
that Shaun Cashwell &
Gena Dunphy do serve
upon Harry Snow,
magistrate, whose
address is 380 W South
St., Martinsburg, WV
25401, an answer or other
defense to the
complaint filed in this
action on or before June
27, 2016, otherwise
judgment by default will be

take such actions as it
shall deem proper con-
cerning the City of
Martinsburg's Home Rule
Plan and any subsequent
application to the West
Virginia Municipal Home
Rule Board

A copy of the City of
Martinsburg's Municipal
Home Rule Plan are avail-
able for review at the Mar-
tinsburg City Hall, 232
North Queen Street, Mar-
tinsburg, West Virginia
Dated: May 23, 2016.

/s/ Gena Long, Recorder
5:27, 6:3 (2)

Certificate of Publication

This is to certify the annexed advertisement

**BOWLES RICE MCDAVID
GRAFF & LOVE LLP**

NOTICE

appeared for 2 consecutive days/weeks
in The Journal Publishing Company, a newspaper
in the City of Martinsburg, WV in its issue
beginning:

5-27-16

and ending

6-3-16

**The Journal
207 W. King Street
Martinsburg, WV 25401**

Fee (\$) 48.16

**THE STATE OF WEST VIRGINIA
COUNTY OF BERKELEY**

The foregoing instrument was acknowledged

before me this June 9 2016 by

Bonnie Long

My commission expires Feb 7, 2021

Jeri L. Wines
Notary Public



**OFFICIAL SEAL
STATE OF WEST VIRGINIA
NOTARY PUBLIC
Jeri L. Wines
203 Grove Springs Lane
Harpers Ferry, WV 25425
My Commission Expires Feb. 7, 2021**

ORDINANCE 2016-16

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


Be it ordained by the City Council of The City Of Martinsburg West Virginia, that the Mayor is hereby authorized to submit the Home Rule Application to the Municipal Home Rule Board in accordance with West Virginia Code §8-1-5a in order for the City of Martinsburg to be included in the pilot program. A copy of said proposal is attached hereto

Be it further Ordained by the City Council of the City of Martinsburg that this Ordinance shall take effect upon the date of adoption.

Introduced: June 9, 2016

Adopted: June 30, 2016

THE CITY OF MARTINSBURG, WEST
VIRGINIA, a Municipal corporation

By: 
George Karos, Mayor

Attest:


Gena Long, City Recorder

CERTIFICATION

The undersigned Recorder of the City of Martinsburg, West Virginia, does hereby certify that the attached is a true, accurate and sealed copy of the Ordinance enacted by the City Council of the City of Martinsburg, West Virginia, on June 30, 2016, authorizing submission of a Home Rule proposal to the Municipal Home Rule Board in accordance with West Virginia Code 8-15-5A.

Given under my hand this 30th day of June, 2016


Gena Long, City Recorder

600 Quarrier Street
Charleston, West Virginia 25301

7000 Hampton Center
Morgantown, West Virginia 26505

501 Avery Street
Parkersburg, West Virginia 26101



101 South Queen Street
Martinsburg, West Virginia 25401

Post Office Drawer 1419
Martinsburg, West Virginia 25402-1419
(304) 263-0836

www.bowlesrice.com

Southpointe Town Center
1800 Main Street, Suite 200
Canonsburg, Pennsylvania 15317

1217 Chapline Street
Wheeling, West Virginia 26003

480 West Jubal Early Drive, Suite 130
Winchester, Virginia 22601

June 30, 2016

West Virginia Municipal Home Rule Board
West Virginia Home Rule Pilot Program
State Capitol Complex, Building 6, Room 553
Charleston, West Virginia 25305

Re: Application for Amendment of the City of Martinsburg Home Rule Application

Ladies and Gentlemen:

We have acted as counsel to the City of Martinsburg in connection with its amendment to its approved Home Rule Application.. For purposes of the opinions contained in this letter, we have examined West Virginia Code § 8-1-5a., the Municipal Home Rule Pilot Program Phase II Application of the City of Martinsburg and Amendment. As to any facts relevant to our opinion which we did not independently establish, we have relied upon factual representations contained within the Application and documentation submitted contemporaneously therewith.

We find that the application for Amendment for Amendment does not include proposals that will make changes to ordinances, acts, resolutions, rules, and regulations contrary to environmental laws, bidding on government construction and other contracts, the Freedom of Information Act, the Open Governmental Proceedings Act, wages for construction of public improvements, the provisions of West Virginia Code § 8-1-5a, the provisions of West Virginia Code § 8-12-5a, and the City of Martinsburg's written plan. Further, we find that the Application does not propose to pass any ordinance, act, resolution, rule, or regulation pertaining to the Constitution of the United States, the Constitution of the State of West Virginia, Federal law or crimes and punishment, Chapters 60A, 61, and 62 of the West Virginia Code or other state crimes and punishment, pensions or retirement plans, annexation, taxation, tax increment financing, extraction of natural resources, persons or property outside the boundaries of the municipality, marriage and divorce laws, or an occupation tax, fee, or assessment payable by a nonresident of a municipality, except to the extent that the Application proposes a municipal sales tax of up to one percent in connection with the reduction of the City of Martinsburg's Business and Occupation Tax, as permitted by West Virginia Code § 8-1-5a(k)(6).

Finally, as evidenced by the documentation enclosed with the Amendment for Amendment, the City of Martinsburg made available a copy of the Amendment for Amendment for

West Virginia Municipal Home Rule Board
June 30, 2016
Page 2

public viewing and published thirty days' advance notice of a public hearing on the Amendment for Amendment, conducted such a public hearing, and adopted an ordinance authorizing the City of Martinsburg to submit the Amendment for Amendment. Further, as evidenced by the documentation enclosed with the Amendment for Amendment, the City of Martinsburg is current in payment of all state fees.

Based upon the foregoing, we opine that the City of Martinsburg's Amendment for Amendment does not violate the provisions of West Virginia Code § 8-1-5a. This opinion is solely for the benefit of the Municipal Home Rule Board in connection with the Application of the City of Martinsburg to the WV Municipal Home Rule Pilot Program Phase II, and without our written consent, this opinion letter may not be used or relied upon by any other person for any purposes whatsoever.

Very truly yours,

Bowles Rice LLP



AFFIDAVIT

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

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

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

And further the affiant sayeth not.



Mark B. Spickler

Taken, sworn to and subscribed before me this 30th day of June, 2016

My commission expires:

Nov. 5, 2017



Notary Public

