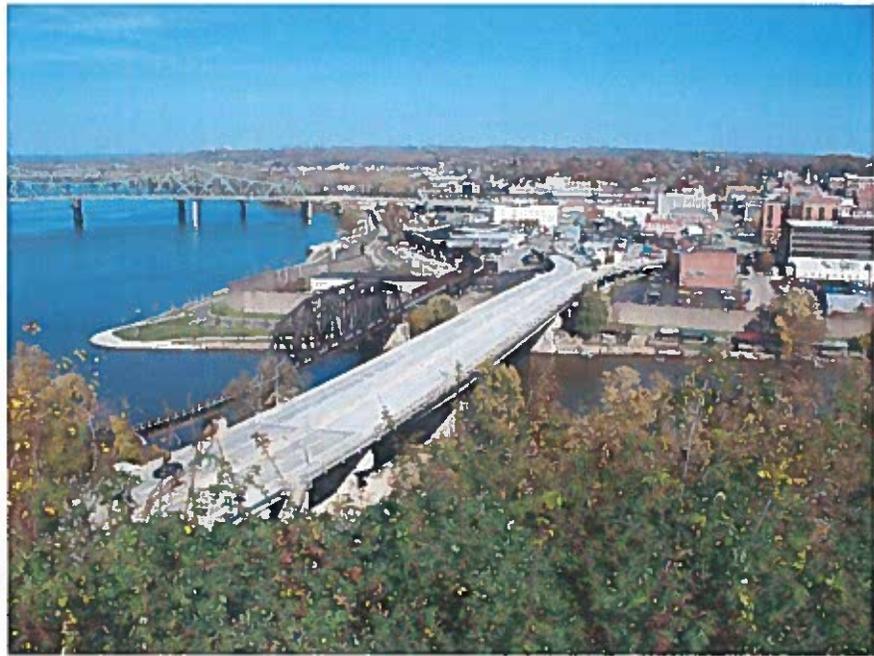


# Proposal to Amend Approved Home Rule Plan



## City of Parkersburg, West Virginia

The City of Parkersburg desires to enact legislation that is consistent with Senate Bill 298, which allows authorized establishments to sale alcohol before 1 p.m. on any Sunday. The following describes the problem with the aforementioned legislation and proposes a solution for the City of Parkersburg. In accordance with the plan amendment process, this proposal was made available to the public at least 30 days prior to the public hearing scheduled on December 13, 2016 at a Parkersburg City Council meeting.

## SECTION I: APPLICATION INFORMATION

### A. General Information

Name of Municipality: City of Parkersburg  
Certifying Official: James E. Colombo, Mayor  
Contact Persons: Rickie Yeager, Development Director  
Address: One Government Square, P.O. BOX 1627  
City, State, Zip: Parkersburg, West Virginia, 26101  
Telephone Number: (P): 304.424.8415 (F): 304.424.8464  
Email Address: rickie.yeager@parkersburgwv.gov  
2010 Census Population: 31,492

### B. Municipal Classification

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

Class I  Class II  Class III  Metro-Government

### C. Category of Issues to Addressed

Please identify areas to be addressed through Home Rule: (check all that apply)

Taxing  Organization  Administrative  Personnel

## EXECUTIVE SUMMARY:

Pursuant to the authority provided by West Virginia State Code § 8-1-5a, the the City of Parkersburg was selected to participate in the West Virginia Home Rule Pilot Program in October 2014. Since then the City has enacted a one percent sales tax on eligible goods and services sold in the community. Revenue from the one percent sales tax has been used to make critical improvements and investments in the community.

In March 2016, the West Virginia Legislature adopted Senate Bill 298. It gave County Commissions the opportunity to conduct an election to allow certain, authorized establishments to sale alcohol after 10 a.m. However, this opportunity was not afforded to municipalities. The City of Parkersburg is seeking to amend its written plan to adopt similar legislation through the Home Rule Pilot Program. The following amendment describes the problem and proposed solution.

## SECTION II: NARRATIVE

### PERMIT SALE OF ALCOHOL BEFORE 1:00 P.M. ON SUNDAYS

**Introduction:** Parkersburg, West Virginia is located at the confluence of the Ohio and Little Kanawha Rivers. Our community is poised for economic development and long-term growth, because of our geography (as it relates to oil and gas development), access to critical infrastructure, institutions of higher learning and skilled labor force. To build on these competitive advantages and ensure our community remains an attractive place for people to live and do business, the City proposes to amend its Home Rule Application in the following manner;

Under WV State Code Section §8-1-5a(k), municipalities participating in the Municipal Home Rule Pilot Program may amend their written plans. For the reasons set forth herein, Parkersburg is now requesting that the Board authorize the following amendment (attached hereto) to Parkersburg's plan originally approved on October 6, 2014.

Specific State Laws, Policies, Rules or Regulations: WV State Code Section 60-7-12(a)(5); 60-8-34; 11-16-18(a)(1), attached hereto.

**Problem:** West Virginia State Code restrains restaurants, hotels and other Class A establishments (licensed by the WV Alcohol Beverage Control Commission) during brunch hours by prohibiting the sale of alcoholic beverages before one o'clock p.m. on Sundays. Below is a short history about brunch and applicable West Virginia State Code.

According to the Smithsonian, Sunday brunch was popularized in the 1930's by hotels as a dining option for travelers on a day when many restaurants were closed. Combining two services (breakfast and lunch) into one provided staffing and kitchen economies for the establishment. Restaurants soon also began offering brunch service and began popularizing the inclusion of morning cocktails such as Bloody Mary's, Bellini's, or Mimosas. The popularity of brunch extended as women entered the post-World War II workforce and began looking for an option to preserve the tradition of a Sunday meal with family and friends, but without the time spent in the kitchen preparing that meal. More and more, weekend mornings became the preferred time for groups of friends with career and family obligations to get together. Brunch also offered a form of celebration on holidays like Mother's Day and Easter, and in the last decade has given rise to new traditions like the bridal brunch.

Since the repeal of prohibition, West Virginia has maintained several laws that prohibit the sale of alcohol by licensed businesses until 1 p.m. (WV State Code §60-7-12 (a)(5)). As a result, businesses in the restaurant and hospitality industry have been discouraged to open early on Sundays. They are also not meeting consumers demand or realizing the full economic benefits associated with a traditional brunch service.

Establishments can often charge higher prices for brunch, because the menu has unique and/or creative items says Eric Stoessel, Editor for Restaurant Hospitality.com. This combined with the sale of alcoholic beverages can yield higher profit margins than other services says Stoessel<sup>1</sup>. While at least one establishment in Parkersburg already offers brunch, the service has not realized its full potential since the

---

<sup>1</sup> Stoessel, Eric. (2013, May 13). Brunch, 'America's pastime,' can be a real moneymaker. Restaurant Hospitality.com

sale of alcohol is prohibited before 1 p.m. on Sundays in the State of West Virginia. More establishments would also consider opening early on Sundays if this prohibition was lifted. That is why the Greater Parkersburg CVB and West Virginia Hospitality and Travel Association support relaxing this regulation.

**Proposed Solution:** The City of Parkersburg requests the authority to authorize certain Class “A” ABCA License Holders to serve alcohol beginning at ten o’clock a.m. on Sundays.

The City of Parkersburg desires to amend its approved Home Rule Plan in order to allow certain Class A, WVABCA license holders to serve alcohol beginning at 10 a.m. on Sundays. This modification is an innovative solution and consistent with the intent regarding the Home Rule Statute. See §8-1-5(a)(a) intent; see also §8-1-5a(i) (modification of time for sale of alcohol within a Home Rule City is not contrary to the provisions of the Home Rule Statute). The Legislature has acknowledged the value of the Home Rule Program as an incubator for municipalities to try new ideas and solutions to overcome administrative and economic restraints and has enacted several state laws that began as one City’s idea in the Home Rule Program.

Although Counties do not currently have Home Rule powers, the Legislature did recently address the issue of relaxing restrictions on Sunday alcohol sales on a countywide basis. During the 2016 regular session, the Legislature enacted a law that provides a mechanism for interested counties to place that issue on the ballot. Notwithstanding, counties and cities often serve a very different population. A survey of Google search interests in “brunch” published in the Washington Post indicates that brunch is much more popular in urban areas than in rural areas. Given that the interests of Parkersburg and those of the rest of the county may be varied, restaurant and hotel owners and operators in Parkersburg and the Greater Parkersburg Visitor’s Bureau (CVB) have requested that the City pursue this issue now. Attached hereto is a letter of support from the Greater Parkersburg CVB. The CVB and its Board of Directors, which is composed of civic leaders and people involved in the City’s hospitality and tourism industries, fully support the City’s amendment to allow the sale of alcohol beginning at 10 a.m. on any Sunday.

Shepherdstown was the first community in West Virginia to successfully address the issue of Sunday alcohol sales through Home Rule. Since then, fourteen other communities have been approved by the Municipal Home Rule Board to implement similar legislation. They include the cities of Clarksburg, Bluefield, Charleston, South Charleston, Lewisburg, Martinsburg, Oak Hill, Bridgeport, Charlestown, Morgantown, Nitro, Ranson, Wheeling and Beckley. The City of Parkersburg request that it be given the authority to enact similar legislation to give residents and visitors an opportunity (choice) to enjoy an unrestricted, traditional brunch service. In so doing, the local restaurants and hoteliers will be able to compete for more business opportunities in West Virginia and Ohio.

Allowing licensed businesses to sale alcohol before 1 p.m. will have positive impacts in the community. They include increased profits to private enterprise, as well as increased revenues to the City and State from sales tax and business and occupation taxes. Apart from the potential financial benefit, this legislation may improve the City’s image in the eyes of business and leisure travelers thereby enriching their travel experience in Parkersburg. This is especially important because Parkersburg is the major employment center and tourist destination in the Mid-Ohio Valley (home to 160,000 people). It would also compliment the City’s efforts to transform downtown Parkersburg into a destination for arts, culture and entertainment.

Recent investments in downtown include a new craft brewing company, farmers marketplace and adult artisan studio. A new, eighty-room, all-suite hotel is also slated to open in 2017. Giving licensed

businesses the opportunity to serve this market is important. It is also consistent with the City's 2020 Comprehensive Master Plan. The plan was developed by a diverse group of stakeholders and strongly recommends that the City provide services and amenities that appeal to all lifestyles with the goal being to retain and attract residents and businesses.

**Conclusion:** The City of Parkersburg respectfully requests that it be granted the power under WV State Code Section 8-1-5a to amend its approved Home Rule Plan to permit the City to allow certain Class "A" ABCA license holders to begin serving alcohol at ten o'clock a.m. on Sundays.

**SECTION III: AFFIDAVITS**

**HEARING MANDATE VERIFICATION**

Insert copy of legal notice here.

**PUBLIC HEREING MANDATE VERIFICATION**

Insert copy of City Council Agenda for December 13, 2016

**PUBLIC HEREING MANDATE VERIFICATION**

Insert copy of City Council meeting minutes from December 13 and 20, 2016 here.

**ORDINANCE AUTHORIZING SUBMISSION OF PLAN**

**Insert certified ordinance here**

**FISCAL IMPACT WORKSHEETS/FORMULAS**

**Not applicable**

**ATTORNEY OPINION**

**Insert here**

**STATE OF WEST VIRGINIA FEE STATEMENT**

**Insert letter from Parkersburg Finance Department here**

**LETTER OF SUPPORT FROM THE GREATER PARKERSBURG CONVENTION AND VISITORS BUREAU**

**Insert here**

## **ATTACHMENT**

### **Applicable State laws, policies, rules or regulation**

#### **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

#### **ARTICLE 7. LICENSES TO PRIVATE CLUBS.**

#### **§60-7-12. Certain acts of licensee prohibited; criminal penalties.**

(a) It is unlawful for any licensee, or agent, employee or member thereof, on such licensee's premises to:

(1) Sell or offer for sale any alcoholic liquors other than from the original package or container;

(2) 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;

(3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;

(4) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of three o'clock a.m. and one o'clock p.m., or, between the hours of three o'clock a.m. and ten o'clock a.m. in any county upon approval as provided for in section three-pp, article one, chapter seven of this code, on any Sunday;

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine or alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;

(7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

(8) 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 said private club or a guest of such member;

(9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium or nitrous oxide for purposes of human consumption except as authorized by the commissioner;

(10) (A) Employ any person who is less than eighteen years of age in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person;

(B) Employ any person who is between the ages of eighteen and twenty-one who is not directly supervised by a person aged twenty-one or over in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person; or

(11) Violate any reasonable rule of the commissioner.

(b) It is 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.

(c) Any person who violates any of the foregoing provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, or imprisoned in the county jail for a period not to exceed one year, or both fined and imprisoned.

**§60-8-34. When retail sales prohibited.**

It shall be unlawful for a retailer, farm winery, wine specialty shop retailer, private wine bed and breakfast, private wine restaurant or private wine spa licensee, his or her servants, agents or employees to sell or deliver wine between the hours of two o'clock a.m. and one o'clock p.m., or, it shall be unlawful for a winery, farm winery, private wine bed and breakfast, private wine restaurant or private wine spa, his or her servants, agents or employees to sell wine between the hours of two o'clock a.m. and ten o'clock a.m. in any county upon approval as provided for in section three-pp, article one, chapter seven of this code, on Sundays, or between the hours of two o'clock a.m. and seven o'clock a.m. on weekdays and Saturdays.

**CHAPTER 11. TAXATION.**

**ARTICLE 16. NONINTOXICATING BEER.**

**§11-16-8. Form of application for license; fee and bond; refusal of license.**

(a) A license may be issued by the commissioner to any person who submits an application, accompanied by a license fee and, where required, a bond, and states under oath:

(1) The name and residence of the applicant, the duration of such residency, that the applicant has been a resident of the state for a period of two years preceding the date of the application and that the applicant is twenty-one years of age. If the applicant is a firm, association, partnership, limited partnership, limited liability company or corporation, the application shall include the residence of the members or officers for a period of two years preceding the date of such application. If a person, firm, partnership, limited partnership, limited liability company, association, corporation or trust applies for a license as a distributor, such person, or in the case of a firm, partnership, limited partnership, limited liability company, association or trust, the members, officers, trustees or other persons in active control of the activities of the limited liability company, association or trust relating to the license, shall state under oath that each has been a bona fide resident of the state for four years preceding the date of such application. If the applicant is a trust or has a trust as an owner, the trustees or other persons in active control of the activities of the trust relating to the license shall provide a certification of trust as described in section one thousand thirteen, article ten, chapter forty-four-d of this code. This certification of trust

shall include the excerpts described in subsection (e), section one thousand thirteen, article ten, chapter forty-four-d of this code and shall further state, under oath, the names, addresses, Social Security numbers and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are twenty-one years of age or older. If a beneficiary is not twenty-one years of age, the certification of trust must state that such beneficiary's interest in the trust is represented by a trustee, parent or legal guardian who is twenty- one years of age and who will direct all actions on behalf of such beneficiary related to the trust with respect to the distributor until the beneficiary is twenty-one years of age. Any beneficiary who is not twenty-one years of age or older shall have his or her trustee, parent or legal guardian include in the certification of trust and state under oath his or her name, address, Social Security number and birth date.

**AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF PARKERSBURG TO SUBMIT AN AMENDMENT TO THE MUNICIPAL HOME RULE BOARD AMENDING THE CITY'S HOME RULE PLAN TO ALLOW THE SALE OF ALCOHOL BEVERAGES BY CERTAIN ALCOHOL BEVERAGE CONTROL ADMINISTRATION CLASS "A" LICENSE HOLDERS BEGINNING AT 10:00 A.M. ON SUNDAYS**

**WHEREAS**, the City of Parkersburg was selected to participate in the West Virginia Home Rule Pilot Program by the Municipal Home Rule Board in October 2014, and

**WHEREAS**, Senate Bill 298 was passed by the West Virginia Legislature on March 12, 2016 to allow county commissions to conduct a county option election on the question of whether to allow restaurants, private clubs, Class A retailers, wineries and wine serving entities to sell alcoholic liquors, wine and non-intoxicating beer as their licenses allow, and distilleries and mini-distilleries to offer complimentary samples of alcohol beginning at 10:00 a.m. on Sundays for on-premises consumption only, and

**WHEREAS**, this new legislation went into effect 90 days after it was passed by the West Virginia Legislature, and

**WHEREAS**, the City may propose to enact such legislation by amending its written plan with the West Virginia Municipal Home Rule Board in accordance with West Virginia State Code §8-1-5a, and

**WHEREAS**, the following amendment to the City of Parkersburg's Home Rule Application/Plan is attached hereto, and

**WHEREAS**, similar legislation has already been adopted by the fifteen communities in the State of West Virginia that participate in the Home Rule Pilot Program, and

**WHEREAS**, the City desires to give residents choices and its business establishments every opportunity to engage in lawful activities that may help grow their business, and

**WHEREAS**, allowing the sale of alcohol after 10 a.m. may create additional employment opportunities and enhance tourists/business travelers overall experience in the community,

**THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PARKERESBURG, WEST VIRGINIA:**

That, James E. Colombo is hereby authorized to submit to the Municipal Home Rule Board a proposed amendment, attached hereto, to the City of Parkersburg's Municipal Home Rule Plan consistent with the West Virginia State Code § 8-1-5a, requesting approval to allow the sale of alcohol beverages by certain Alcohol Beverage Control Administration Class "A" License Holders beginning at 10:00 A.M. on Sundays.

Sponsored by: Reed, Coram, Carpenter, Reynolds, Bigley, Lynch and Wilcox



**PUBLIC HEARING NOTICE  
CITY OF PARKERSBURG, WEST VIRGINIA  
HOME RULE PLAN AMENDMENT**

Notice is hereby given by City Council of the City of Parkersburg, WV, that it will hold a public hearing on Tuesday, December 13, 2016 at 7:30 p.m. at the Parkersburg Municipal Building (City Council Chambers – 2<sup>nd</sup> Floor), located at One Government Square, Parkersburg, WV 26101. The purpose of this public hearing is to discuss a proposed amendment to the City of Parkersburg's Home Rule Plan that would allow the sale of alcohol beverages by certain Alcohol Beverage Control Administration Class "A" license holders beginning at 10:00 A.M on Sundays.

The City of Parkersburg's proposed amendment to its Home Rule written plan and application to the Municipal Home Rule Board will be made available for review 30 days prior to the public hearing, in the Office of the City Clerk and Development Department, located in the Parkersburg Municipal Building, One Government Square, Parkersburg, WV 26101, beginning November 11, 2016, Monday through Friday, between the hours of 8:00 a.m. and 4:30 p.m. as well as online at [www.parkersburgcity.com](http://www.parkersburgcity.com).

All interested citizens are invited to attend the public hearing scheduled on December 13, 2016 at 7:30 p.m. in the City Council Chambers to discuss the City's written plan and application. Written comments may be addressed to the City Clerk of the City of Parkersburg, One Government Square, Parkersburg, WV 26101.

The first reading of the ordinance approving the proposed amendment and subsequent application to the Municipal Home Rule Board will be held at the Parkersburg City Council meeting on Tuesday, December 13, 2016 at 7:30 p.m. in the Parkersburg Municipal Building (City Council Chambers – 2<sup>nd</sup> Floor). A second reading on the City's amendment and application will be held on December 20, 2016 at the same time and location.

PLEASE PUBLISH IN BOTH NEWSPAPERS AS A CLASS II LEGAL ADVERTISEMENT, ONCE EACH WEEK, FOR TWO CONSECUTIVE WEEKS, STARTING NOVEMBER 11, 2016. PLEASE SEND A COPY OF THE PUBLIC NOTICE AND INVOICE TO THE:

ATTN: RICKIE YEAGER  
DEVELOPMENT DEPARTMENT  
CITY OF PARKERSBURG  
ONE GOVERNMENT SQUARE  
PARKERSBURG, WV 26101.

