

CITY OF BUCKHANNON

**MUNICIPAL HOME RULE
PILOT PROGRAM
AMENDMENT APPLICATION**



**SUBMITTED TO THE WEST VIRGINIA
MUNICIPAL HOME RULE BOARD**

Municipal Home Rule Pilot Program APPLICATION FOR AMENDED PLAN

SECTION I: APPLICANT INFORMATION	
A. General Information	
Name of Municipality: City of Buckhannon	
Certifying Official: David W. McCauley	Title: Mayor
Contact Person: Amberle Jenkins	Title: Director of Finance
Address: 70 E. Main Street	
City, State, Zip: Buckhannon, West Virginia 26201	
Telephone Number: 304-472-1651	Fax Number: 304-472-4620
E-Mail Address: Mayor@buckhannonwv.org	
2010 Census Population: 5,639	
B. Municipal Classification	
<input type="checkbox"/> Class 1 <input type="checkbox"/> Class II <input checked="" type="checkbox"/> Class III <input type="checkbox"/> Class IV	
C. Category of Issues to be Addressed (please attach descriptions for applicable categories)	
<input type="checkbox"/> Tax <input type="checkbox"/> Organization <input type="checkbox"/> Administration <input type="checkbox"/> Personnel <input checked="" type="checkbox"/> Other	

SECTION II: NARRATIVE (written plan, including the following) See Attachments
1) Please see Page 3

SECTION III: AFFIDAVITS See Attachments
Hearing Mandate Verification Publication Mandate Verification Ordinance Authorizing Submission of Plan Fiscal Impact Worksheets/Formulas Feasibility Study (if taxes are proposed) Attorney Opinion (application complies with statutory requirements) State of West Virginia Fees Statement (none outstanding) Agreement to Requirements Statement (firearms, ammunition and firearm accessories)

Requirements Concerning Firearms, Ammunition and Firearm Accessories

Definitions: As used in this subsection:

- (A) Ammunition means fixed cartridge ammunition, shotgun shells, the individual components of fixed cartridge ammunition and shotgun shells, projectiles for muzzle-loading firearms and any propellant used in firearms or ammunition.
- (B) Firearm accessory means a device specifically designed or adapted to enable the wearing or carrying about one's person, or the storage or mounting in or a conveyance, of a firearm, or an attachment or device specifically designed or adapted to be inserted into a affixed onto a firearm to enable, alter or improve the functioning or capabilities of the firearm.

(C) Firearm has the same meaning as in W. Va. § 61-7-2.

General Rule:

- (A) Municipalities participating in the Municipal Home Rule Pilot Program may not restrict in any manner the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any revolver, pistol, rifle, or shotgun, or indirectly prohibit the ownership of the ammunition, or, to restrict in any manner the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any other firearm accessory or accouterment, under any order, ordinance or rule promulgated or enforced by the municipality. This rule may not be construed to prevent any law enforcement official with appropriate authority from enforcing any statute enacted by the state.
- (B) The authority of a municipality to regulate firearms, ammunition, or firearm accessories may not be inferred from its proprietary authority, home rule status or any other inherent or general power.
- (C) Any existing or future orders, ordinances, or rules promulgated or enforced in violation of this subsection are null and void.
- (D) A municipality may regulate the carrying of a firearm in municipal buildings dedicated to government operations, other than parking buildings or garages.

Applicability and Effective Dates:

Ninety days after a new municipality has been selected by the Board to participate in the pilot program, or a previously participating municipality has chosen to continue to participate in the pilot program, any municipal gun ordinances previously authorized by the provisions of section five-a, article twelve, chapter eight of this code shall no longer be of any force or effect for any municipality participating in this program, to the extent they are in conflict with the provisions of this subsection: Provided, that no provision in this subsection may be construed to limit the authority of a municipality to restrict the commercial use of real estate in designated areas through planning or zoning ordinance.

Certifying Official Signature (Mayor or designee): **David W. McCauley, Mayor**

City of Buckhannon Home Rule Amendment Application

Table of Contents

<u>Heading</u>	<u>Page</u>
I. Background	4
II. Municipal Classification	5
III. Proposal: To change the beginning hour at which non-intoxicating beer, wine and alcoholic liquor may be sold or dispensed for on-premises consumption on Sundays, only within the City of Buckhannon, from 1:00 p.m. to 10:00 a.m.	5

Background

Nestled in the heart of north central West Virginia, Buckhannon is located just miles from Interstate 79 and along U.S. Routes 119, 48 (Corridor H) and 33. Our community offers the simplicity of small town life with the benefit of specialty and antique shops, restaurants, motels, bed and breakfast establishments, Civil War heritage and cultural experiences, and an outstanding liberal arts college – West Virginia Wesleyan College, a 4-year residential college which draws many hundreds of students from other states and countries with the ancillary economic benefits to the community and the state of their faculty, staff, visitors and alumni. Buckhannon's Main Street is a registered Historic District and hosts numerous community events year-round including the renowned West Virginia Strawberry Festival, and Festival Fridays – a new community tradition which draws crowds of hundreds into our downtown's crown jewel park – Jawbone Park – on Friday afternoons from the late spring through early autumn to enjoy locally-sourced food and drink, live music, and camaraderie.

Buckhannon's arts district includes a retail outlet for local artists, a micro-theatre and a performing arts center on the campus of West Virginia Wesleyan College that hosts numerous productions including Mountain Stage performances, Jazz performances and theatre productions. Every September, the Main Street Arts Festival celebrates Buckhannon's local art organizations and talented artists. The City recently purchased the almost century-old Colonial Theatre, which will be restored soon. Outdoor recreation can be found within Buckhannon's city limits. The Buckhannon River is known as one of the best musky fishing locations in the nation and has multiple entries for small boats and kayaks. Our scenic parks are great spots for picnics, walking, biking, and more.

Though the City of Buckhannon promotes its distinctiveness and individual history, it is not too dissimilar from other cities in West Virginia. As with all cities in the state, the City of Buckhannon and its elected representatives are committed to providing every appropriate opportunity for economic growth and diversification for its residents and the businesses located within the City. The City's participation in the Municipal Home Rule Pilot Program has resulted in increased flexibility and responsiveness in meeting the City's challenges, and city leadership is grateful for Buckhannon's participation in the Municipal Home Rule Pilot Program.

Regional tourism is an increasing sector of the local economy, and about twelve restaurants and other businesses are licensed to serve beer, wine, and alcoholic liquor within the corporate limits of the City of Buckhannon. Pursuant to Senate Bill 298, enacted during the 2016 Regular Session of the West Virginia Legislature, the Upshur County Commission held a county option election during the general election held on November 8, 2016 to potentially change the beginning hour to permit the sale or dispensing of non-intoxicating beer, wine and alcoholic liquor for on-premises consumption from 1:00 p.m. to 10:00 a.m. on Sundays. Upshur County voters voted against the question by a margin of 51% to 49%; however, voters within the City of Buckhannon voted for the question by a margin of 57% to 43%. Senate Bill 298 does not provide a mechanism by which the City of Buckhannon may conduct its own option election, leaving the Municipal Home Rule Board as the only entity which may authorize the Buckhannon City Council to put into effect the will of the people of the City as reflected in the option election.

The City of Buckhannon, in an effort to reflect the clear will of the majority of its voters on this question, as well as to realize the modest economic benefits of the adoption of the measure, including the state's realization of attendant increased tax revenue, seeks to amend its Home Rule Application to permit the enactment of an ordinance changing the beginning hour at

which non-intoxicating beer, wine and alcoholic liquor may be sold or dispensed for on-premises consumption on Sundays from 1:00 p.m. to 10:00 a.m.. The City notes that approximately fifteen cities have been approved by the Municipal Home Rule Board for similar measures, with applications expected or pending from several others. All told, about 85 West Virginia municipalities now enjoy that opportunity.

Municipal Classification

The City of Buckhannon has a population of 5,639 (2010 U.S. Census) and is classified under West Virginia Code § 8-1-3 (3) as a Class III city.

Proposal: To change the beginning hour at which non-intoxicating beer, wine and alcoholic liquor may be sold or dispensed for on-premises consumption on Sundays, only within the City of Buckhannon, from 1:00 p.m. to 10:00 a.m.

Problem: West Virginia Code prohibits the sale or dispensing of non-intoxicating beer, wine and alcoholic liquor by private club licensees between the hours of 3:00 a.m. and 1:00 p.m. on Sundays, and by restaurants and private wine bed and breakfasts between the hours of 2:00 a.m. and 1:00 p.m. on Sundays. This restriction within the law has prevented these establishments from offering more traditional brunch menus, missing out on potential economic activity, including tax revenue, which will inure to the benefit of the community and the state. This problem is more acutely realized in Buckhannon because of the presence of West Virginia Wesleyan College and its high number of out-of-state students, whose parents, as well as the College's alumni and other visitors, often travel to the area from their residences in other states where laws may permit the sale of alcohol during the traditional "brunch hours" of 10:00 a.m. through 1:00 p.m. Their inability to enjoy the same amenities as those to which they are accustomed at home represents lost economic activity and tax revenue at a time during which all levels of government seek to enhance such activity.

Moreover, during the option election called by the Upshur County Commission pursuant to Senate Bill 298 (2016) and held during the general election held on November 8, 2016, which would have put into effect the language of this proposed Amendment, voters within the City of Buckhannon approved the ballot question by a margin of 57% to 43%, while voters countywide voted against it by a slim margin of 51% to 49%. In order to place into effect the clearly expressed will of the voters of the City of Buckhannon with respect to the ballot question, the City Council's only present option is to seek this Amendment to its Home Rule Plan, following the example of Buckhannon's sister cities across the State of West Virginia who have sought approval for municipal implementation of this change to the law within their corporate limits.

Solution: If this Amendment is approved by the Municipal Home Rule Board, the City of Buckhannon will consider the enactment of an ordinance changing the beginning hour at which non-intoxicating beer, wine and alcoholic liquor may be sold or dispensed for on-premises consumption on Sundays from 1:00 p.m. to 10:00 a.m.

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