

ORDINANCE NO. 416 OF THE CITY OF BUCKHANNON,
AN ORDINANCE FORMALLY ENACTING THE AMENDMENT TO THE CITY OF
BUCKHANNON'S HOME RULE PLAN APPROVED BY THE STATE OF WEST
VIRGINIA'S HOME RULE BOARD, PROVIDING FOR AN EARLIER BEGINNING
HOUR FOR SALE OR DISPENSING OF ALCOHOL FOR ON-PREMISES
CONSUMPTION ON SUNDAYS

WHEREAS, Article VI, Section 39(a) of the Constitution of West Virginia, which Section 39(a) was ratified on November 3, 1936, captioned "Home Rule for Municipalities," specifically provides that a municipality "through its legally constituted authority, may pass all laws and ordinances relating to its municipal affairs: Provided, that any such charter or amendment thereto, and any such law or ordinance so adopted, shall be invalid and void if inconsistent or in conflict with this Constitution or the general laws of the State then in effect, or thereafter, from time to time enacted"; and,

WHEREAS, in 2007, the West Virginia legislature enacted the Municipal Home Rule Pilot Program embodied by the statutory provisions of Chapter 8, Article 1, Section 5a of the West Virginia Code; and,

WHEREAS, effective July 1, 2013, the West Virginia legislature amended the Municipal Home Rule Pilot Program to expand the Program to authorize as many as 20 municipalities to participate in the expanded pilot program until July 1, 2019; and,

WHEREAS, on October 6, 2014, the City of Buckhannon was notified that its Home Rule application was approved in all respects by the State of West Virginia's Municipal Home Rule Board; and,

WHEREAS, Chapter 8, Article 1, Section 5a, paragraph (k) of the West Virginia Code specifically provides that "A municipality participating in the Municipal Home Rule Pilot Program may amend its written plan at any time", upon compliance with certain public notice and hearing requirements, and the submission of an application for amendment to its written plan; and,

WHEREAS, the Council of the City of Buckhannon previously authorized the submission of an amendment to the written Home Rule Plan for the City of Buckhannon through Ordinance No. 414, enacted by the Council on March 2, 2017, said amendment to change the beginning hour at which non-intoxicating beer, wine and alcoholic liquor

may be sold or dispensed for non-premises consumption on Sundays, only within the City of Buckhannon; and,

WHEREAS, the City of Buckhannon thereafter fully complied with all statutory provisions of Chapter 8, Article 1, Section 5a, paragraph (l) of the West Virginia Code with respect to the preparation and submission of its application for amendment; and,

WHEREAS, the West Virginia Municipal Home Rule Board unanimously approved the City's application for amendment to its written Home Rule Plan at its regularly-scheduled meeting held April 3, 2017; and,

WHEREAS, the Council of the City of Buckhannon now desires to specifically and formally adopt the provision of the said amendment to the City's Home Rule Plan as was approved by the State of West Virginia's Municipal Home Rule Board.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF BUCKHANNON, AS FOLLOWS:

ARTICLE I - FINDINGS: The Council of the City of Buckhannon hereby makes the following findings:

(A) Pursuant to Senate Bill 298, enacted during the 2016 Regular Session of the West Virginia Legislature, the Upshur County Commission called an option election for the purpose of public approval or disapproval of changing the beginning hour at which the beginning hour at which non-intoxicating beer, wine and alcoholic liquor may be sold or dispensed for non-premises consumption on Sundays, said option election held during the general election held on November 8, 2016.

(B) The results of the option election resulted in the narrow defeat of the measure countywide; however, the measure passed by a significant margin in the four voting precincts within municipal limits.

(C) The City of Buckhannon was formally designated by the State of West Virginia's Municipal Home Rule Board as a "Home Rule" municipality on October 6, 2014.

(D) The Council of the City of Buckhannon elected, through Ordinance No. 414, to place into effect the expressed will of the voters of the City of Buckhannon with respect to the aforementioned option election through the municipal home rule process, approving the submission of an application for amendment to its written Home Rule

Plan, which application was approved by the West Virginia Municipal Home Rule Board on April 3, 2017;

(E) The City of Buckhannon as a “Home Rule” municipality remains committed to complying with all statutory provisions of the Municipal Home Rule Pilot Program Act.

(F) The City of Buckhannon understands that pursuant to the amendments to the Act as effectuated by the Legislature of the State of West Virginia effective June 12, 2015, and specifically pursuant to Chapter 8, Article 1, Section 5a(i) of the West Virginia Code that the City of Buckhannon shall not at any time pass or enact any ordinance, act, resolution, rule or regulation pursuant to the Home Rule Act that is contrary to any of the following:

- (1) environmental law;
- (2) bidding on government construction and other contracts;
- (3) the Freedom of Information Act;
- (4) the Open Governmental Proceedings Act;
- (5) wages for construction of public improvements;
- (6) the provisions of Chapter 8, Article 1, Section 5a of the West Virginia Code, as amended;
- (7) the provisions of Chapter 8, Article 12, Section 5a of the West Virginia Code, as amended;
- (8) the City of Buckhannon’s written Home Rule plan;
- (9) the Constitutions of either the United States or the State of West Virginia
- (10) federal law or crimes and punishment
- (11) Chapters 60A, 61, and 62 of the West Virginia Code or state crimes and punishment;
- (12) laws governing pensions or retirement plans;
- (13) laws governing annexation;
- (14) laws governing taxation;
- (15) laws governing tax increment financing;
- (16) laws governing extraction of natural resources;
- (17) marriage and divorce laws

ARTICLE II – ENABLING PROVISIONS:

Within the corporate limits of the City of Buckhannon, on Sundays, the beginning hour at which non-intoxicating beer, wine and alcoholic liquor may be sold or dispensed for on-premises consumption is 10:00 a.m.

ARTICLE III - EFFECTIVE DATE: This Ordinance shall be deemed effective thirty (30) days following the second (2nd) reading, passage and adoption by the Council of the City of Buckhannon, i.e., May 20, 2017.

FIRST READING: April 6, 2017

SECOND READING, PASSAGE & ADOPTION: April 20, 2017

David W. McCauley, Mayor

CERTIFICATE OF ENACTMENT

I, Susan Aloï, City Recorder, do hereby certify that the foregoing Ordinance No. 416 was lawfully ordained and enacted by the Council of the City of Buckhannon during a regular session of the said Council assembled on April 20, 2017.

Susan Aloï, City Recorder