

AN ORDINANCE OF THE COUNCIL OF THE CITY OF CLARKSBURG ENACTING ARTICLE 746, PART SEVEN OF THE CODIFIED ORDINANCES OF THE CITY TO IMPLIMENT A CONSUMER SALES AND SERVICE TAX AND A USE TAX;

WHEREAS, by the authority granted to the City of Clarksburg by its participation in the West Virginia Home Rule Pilot Program, Phase II, under W.Va. Code § 8-1-5a, the City of Clarksburg shall now have the ability to implement a Municipal Sales Tax.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLARKSBURG, WEST VIRGINIA:

Sec. 746.01 Definitions.

- (a) Terms used in this article or in the administration, collection and enforcement of the taxes imposed by this article and not otherwise defined in this article shall have the meanings ascribed to them in articles nine, ten, fifteen, fifteen-a and fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended. In the event of any conflict between the definitions set forth herein and those definitions set forth in articles nine, ten, fifteen, fifteen-a and fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended, the definitions set forth in articles nine, ten, fifteen, fifteen-a and fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended shall supersede those set forth herein.
- (b) As used in this section:
 - (1) "Business" includes all activities engaged in or caused to be engaged in by any person with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.
 - (2) "City" or "this City" means the City of Clarksburg, West Virginia.
 - (3) "Code of West Virginia" means the Code of West Virginia, 1931, as amended.
 - (4) "Person" means any individual, partnership, association, corporation, limited liability company, limited liability partnership or any other legal entity, including this State or its political subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator of any person.
 - (5) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;
 - (6) "Purchase price" means the measure subject to the taxes imposed by this article and has the same meaning as sales price;
 - (7) "Purchaser" means a person who purchases tangible personal property, custom software or a service taxed by this article.
 - (8) "Sale," "sales" or "selling" have the meaning ascribed to those terms in article fifteen-b, chapter eleven of the Code of West Virginia.

- (9) "Sales price" has the meaning ascribed to that term in article fifteen-b, chapter eleven of the Code of West Virginia.
- (10) "Sales tax" means the tax levied under Section 746.02 of this article.
- (11) "Service" or "selected service" have the meaning ascribed to those terms in article fifteen-b, chapter eleven of the Code of West Virginia.
- (12) "State sales tax" means the tax levied by article fifteen, chapter eleven of the Code of West Virginia.
- (13) "State use tax" means the tax levied by article fifteen-a, chapter eleven of the Code of West Virginia.
- (14) "Tax" means the taxes imposed by this article and includes additions to tax, interest and penalties levied under article ten, chapter eleven of the Code of West Virginia, 1931, as amended.
- (15) "Tax Commissioner" means the chief executive officer of the Tax Division of the Department of Revenue of this State, as provided in W.Va. Code § 11-1-1.
- (16) "Ultimate consumer" or "consumer" means a person who uses or consumes services or tangible personal property or custom software.
- (17) "Use" for purposes of the tax imposed by Section 746.03 of this article means and includes:
- a. The exercise by any person of any right or power over tangible personal property or custom software incident to the ownership, possession or enjoyment of the property, or by any transaction in which possession of or the exercise of any right or power over tangible personal property, custom software or the result of a taxable service is acquired for a consideration, including any lease, rental or conditional sale of tangible personal property or custom software; or
 - b. The use or enjoyment in this State of the result of a taxable service. As used in this definition, "enjoyment" includes a purchaser's right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property.

The term "use" does not include the keeping, retaining or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the purpose of subsequently transporting it outside the City for use thereafter solely outside this City.

- (18) "Use tax" means the tax imposed by Section 746.03 of this article.
- (19) "Vendor" means any person engaged in this City in furnishing services taxed by this article or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this article.

Sec. 746.02 Imposition of Consumer Sales and Service Tax.

For the privilege of selling tangible personal property or customer software and for the privilege of furnishing certain selected services, a vendor doing business in this City shall collect from the purchaser the taxes imposed by this section and pay the amount of taxes collected to the Tax Commissioner at the same time and in the same manner as the consumers sales and service tax imposed by article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, in accordance with procedures and processes prescribed by the Tax Commissioner. The rate of tax shall be one percent of the sales price, as defined in section two, article fifteen b, chapter eleven of the Code of West Virginia, 1931, as amended, of the tangible personal property, custom software or taxable service purchased.

Sec. 746.03 Imposition of Use Tax.

An excise tax is hereby levied and imposed on the use in this City of tangible personal property, custom software and the results of taxable services, to be collected and paid to the Tax Commissioner as agent for the City in the same manner that state use tax is collected under article fifteen-a and article fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended. The rate of tax shall be one percent of the purchase price, as defined in article fifteen-b, chapter eleven of the Code of West Virginia, of the tangible personal property, custom software or taxable service used within the City.

Sec 746.04 Calculation of Tax on Fractional Parts of a Dollar.

The tax computation under Section 746.02 and 746.03 shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period but the method used shall be the same as that used for purposes of computing the state sale or use tax.

Sec. 746.05 State and Local Sales and Use Tax Bases.

The taxable base of the taxes imposed by Section 746.02 and 746.03 of this article shall be identical to the sales and use tax base of this State except as provided in Section 746.06 of this article unless otherwise prohibited by federal law as required by W.Va. Code§ 11-15B-34.

Sec. 746.06 Exceptions.

The taxes imposed by this article do not apply to:

- (a) The sale or use of motor fuel, as defined in article fourteen-c, chapter eleven of the Code of West Virginia, 1931, as amended, upon which the tax imposed by that article is collected.
- (b) The sale or use of motor vehicles upon which the tax imposed by section three-c, article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, is paid
- (c) The purchase or use of any tangible personal property, custom software or service that the City is prohibited from taxing under the laws of this State.
- (d) The tax imposed by Section 746.02 does not apply to any transaction that is exempt from the tax imposed by article fifteen, chapter eleven of the Code of West Virginia.
- (e) The tax imposed by Section 746.03 does not apply to any purchase upon which the tax imposed by Section 746.02 has been paid, nor to any transaction that is exempt from the tax imposed by article fifteen-a, chapter eleven of the Code of West Virginia.

Sec. 746.07 Credit for Local Sales Tax Lawfully Paid to Another Municipality.

- (a) A person is entitled to a credit against the use tax imposed by Section 746.03 of this article on the use of a particular item of tangible personal property, custom software or results of a taxable service equal to the amount, if any, of sales tax lawfully paid to another municipality for the acquisition of that property, custom software or service: Provided, That the amount of credit allowed may not exceed the amount of use tax imposed by Section 746.03 on the use of the tangible personal property, custom software or results of the taxable service in this City.
- (b) For purposes of this section
 1. "Sales tax" includes a sales tax or compensating use tax imposed on the sale or use of tangible personal property, custom software or the results of a taxable service by the municipality in which the sale occurred; and
 2. "Municipality" includes municipalities of this state or of any other state of the United States.
- (c) No credit is allowed under this section for payment of any sales or use taxes imposed by this state or any other state. For purposes of this paragraph, "state" includes the fifty states of the United States and the District of Columbia but does not include any of the several territories organized by Congress.

Sec. 746.08 Local Rate and Boundary Changes.

- (a) The Tax Commissioner is required by W.Va. Code§ 11-15B-35 to maintain a database for all jurisdictions levying a sales or use tax in this State. The City shall furnish the Tax Commissioner with information the Tax Commissioner requires for that database that will allow the Tax Commissioner to maintain a database that assigns each five-digit and nine-digit zip code within the city to the proper rate of tax. If any nine-digit zip code area includes area outside this City, the single state and local rate assigned to that area in the Tax Commissioner's database will

be the lowest rate applicable to that area: Provided, That, when sales occur at and are sourced to a physical location of the seller located in the City in that nine digit zip code area, the seller shall collect the tax imposed by Section 746.02 of this article.

- (b) Whenever boundaries of the City change, whether by annexation or de-annexation, the City Collector shall promptly notify the Tax Commissioner in writing of the change in boundaries and provide the Tax Commissioner with the nine-digit zip code or codes for the area annexed or de-annexed any other information the Tax Commissioner may require to maintain the database.

Sec. Sec. 746.09 State Level Administration.

- (a) The Tax Commissioner is responsible for administering, collecting and enforcing the taxes imposed by this article as provided in W. Va. Code § 8-1-5a, § 8-13C-6 and § 11-15B-33. The City may enter into an agreement with the Tax Commissioner that will allow employees of the City auditing a vendor with a physical location in the City for compliance with the City's business and occupation tax to also audit that location for compliance with the sales and use tax laws of this State and this City and to share that information with the Tax Commissioner.
- (b) The Tax Commissioner may retain from collections of the taxes imposed by this article a fee of up to one percent of the amount of the taxes collected by the Tax Commissioner prior to the effective date of the legislative rule setting the fee pursuant to W. Va. Code § 11-10-11 c. The fee retained from taxes collected on and after that date shall be the fee allowed by W. Va. Code § 11-10-11c or by any other state law or legislative rule.
- (c) The Tax Commissioner shall deposit all the proceeds from collection of the taxes imposed by this article, minus any fee for collecting, enforcing and administering taxes retained under this section, in the sub-account for this city established in Municipal Sales and Service Tax and Use Tax Fund, an interest bearing account created in the State Treasury pursuant to W. Va. Code § 8-13C-7. All moneys collected and deposited in the sub-account for the city shall be remitted at least quarterly by the State Treasurer to the City Treasurer, as provided W. Va. Code § 8-13C-7.

Sec. Sec. 746.10 Administrative Procedures.

Each and every provision of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven of the Code of West Virginia applies to the administration, collection and enforcement of the sales and use taxes imposed pursuant to this article, except as otherwise expressly provided in article thirteen-c, chapter eight of the Code of West Virginia, with like effect as if that act were applicable only to the taxes

imposed by this article and were set forth in this article, as provided in W.Va. Code § 8-13C-6.

Sec. 746.11 Criminal Penalties.

Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in article nine, chapter eleven of the Code of West Virginia applies to the administration, collection and enforcement of the sales and use taxes imposed pursuant to this article with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set forth in in this article, as provided in W.Va. Code § 8-13C-6: Provided, That the criminal penalties imposed upon conviction for a criminal violation of this article may not exceed the maximum penalties allowed by law for that violation.

Sec. 746.12 Automatic Updating.

Any amendments to articles nine, ten, fifteen, fifteen-a and fifteen-b, chapter eleven of the Code of West Virginia shall automatically apply to a sales or use tax imposed pursuant to this article, to the extent applicable, as provided in W. Va. Code § 8-13C-6.

Sec. 746.13 Deposit of Taxes Collected and Received in a Special Revenue Fund.

(a) There is hereby established a special revenue fund in the City Treasury which shall be designated and known as the City Sales and Use Tax Fund. The City Sales and Use Tax Fund shall consist of:

- a. All revenues received from collection of the City's sales and use taxes, including any interest, additions to tax and penalties deposited with the City Treasurer;
- b. All appropriations to the fund;
- c. All interest earned from investment of the fund; and
- d. Any gifts, grants or contributions received and placed by the City into the City Sales and Use Tax Account.

Revenues in the City Sales and Use Tax Fund shall not be treated by any person to be a general revenue of the City. Revenues in the City Sales and Use Tax Fund shall be disbursed in the manner and consistent with the priorities set forth for in subsection (b) below.

(b) Revenues in the City Sales and Use Tax Fund shall be allocated by City Council in accordance with the following priorities:

- a. First, For contributions to the Police and Fire pension funds to reduce unfunded liabilities in accordance with sound actuarial practice;
- b. Second, for capital expenditures including but not limited to infrastructure improvements;

- c. Third, to provide funding to assist with economic projects and programs or providing the opportunity for tax incentives to help grow the City's tax base and create jobs.
- d. Fourth, any unencumbered revenue in the City Sales and Use Tax Fund may periodically be transferred as necessary or convenient to the City's General Fund.

Sec. 746.14 : Severability and Savings Clause

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced. .

Sec. 746.15 : Effective Date.

This Ordinance shall be forwarded to the West Virginia State Tax Department immediately upon adoption and sales tax shall be effective upon the date noticed by the West Virginia State Tax Department. In no case, however, shall the imposition of sales and use tax be collected earlier than July 1, 2015.

This Ordinance shall be effective upon passage. Passed by Council of the City of Clarksburg on **FIRST READING** on this ____ day of _____, 2014.

Passed by Council of the City of Clarksburg on **SECOND READING** on this ____ day of _____, 2014.

CATHERINE A. GOINGS, MAYOR

ATTEST:

Annette M. Wright, City Clerk

APPROVED AS TO FORM:

Gregory A. Morgan, City Attorney