Regular Meeting of the Clarksburg City Council

CITY OF CLARKSBURG

APRIL 15, 2021

5:30 p.m. – City Manager’s Conference Room
6:00 p.m. – Council Chambers

- Mayor Ryan Kennedy
- Vice Mayor Jimmy Marino
- Councilmember Frank Ferrari
- Councilmember Marshall Goff
- Councilmember Lillie Junkins
- Councilmember Gary Keith
- Councilmember Jim Malfregeot

* Harry Faulk, City Manager
* Annette Wright, City Clerk

Clarksburg Municipal Building
222 West Main Street
Clarksburg, WV 26301
304-624-1673
AGENDA
CITY OF CLARKSBURG

AGENDA FOR REGULAR MEETING OF COUNCIL OF THE CITY OF CLARKSBURG TO BE HELD THURSDAY, APRIL 15, 2021 AT THE CLARKSBURG MUNICIPAL BUILDING – COUNCIL CHAMBERS, 222 WEST MAIN STREET, CLARKSBURG, WEST VIRGINIA AT 6:00 P.M.

PRIOR TO THE REGULAR COUNCIL MEETING, COUNCIL WILL BE MEETING IN THE CITY MANAGER’S CONFERENCE ROOM AT 5:30 P.M. FOR A CONFERENCE SESSION

ORDER OF BUSINESS

1. ROLL CALL

2. PRAYER (to be given by Councilmember Keith) & PLEDGE

3. APPROVAL OF MINUTES: CONFERENCE (WORK) SESSION – MARCH 25, 2021

4. PETITIONS, COMMUNICATIONS AND PUBLIC HEARINGS

5. CITY MANAGER’S REPORT/UPDATE

6. UNFINISHED BUSINESS:
   A. CONSIDERATION OF FIRST READING OF AN ORDINANCE OF THE CITY OF CLARKSBURG TO AMEND SECTION 745 REGARDING TAX CREDITS TO REENACT THE SAME AND ADD A TAX CREDIT FOR A NEW BUSINESS LOCATION WITH CONSTRUCTION COSTS

7. NEW BUSINESS:
   A. CONSIDERATION OF FIRST READING OF AN ORDINANCE OF THE CITY OF CLARKSBURG TO CREATE AN ORDINANCE LICENSING AND SETTING FORTH RESTRICTIONS ON MOBILE FOOD VENDORS
   B. CONSIDERATION OF FIRST READING OF AN ORDINANCE ADJUSTING COMPENSATION OF CITY COUNCIL MEMBERS

8. COUNCIL COMMENTS

9. ADJOURNMENT
March 25, 2021

The Clarksburg City Council met in CONFERENCE (Work) SESSION on Thursday, March 25, 2021 at 5:00 PM at the Clarksburg Municipal Building – Council Chambers, 222 West Main Street, Clarksburg, West Virginia, with Mayor Kennedy presiding.

COUNCIL MEMBERS PRESENT:  
Frank Ferrari  
Marshall Goff  
Lillie Junkins  
Gary Keith  
Jim Malfregeot  
Vice Mayor Jimmy Marino  
Mayor Ryan Kennedy

ALSO PRESENT:  
Harry Faulk, City Manager  
Annette Wright, City Clerk

With attendance taken upon arrival by the City Clerk, Council proceeded with the following agenda item:

- **Discussion regarding American Rescue Plan of 2021 – Chad Riley of Thrasher Engineering**

Mr. Riley stated that they try to be a resource to cities and counties with regard to the American Rescue Plan Act wherein Clarksburg is to receive $6.34 million in federal funds to use for responding to or mitigating COVID-19 and its negative impact on the economy. It was noted that half of the monies were anticipated to be received in May with the remaining half to come approximately a year later. Also, municipalities will be given until the end of 2024 to spend the funds. Mr. Riley stated that he believed that reporting the need and proper use of the funds would be necessary in order to obtain the additional funds. Mr. Riley recommended that Council be ready and have ideas for the use of the funds; however, he thought there may be some flexibility with the use of the funds.

Councilmember Keith stated that he would like to use the money to demolish the Waldo and the Parsons hotel. Councilmember Keith also suggested partnering with Bridgeport to support a project that would be beneficial to both municipalities. Vice Mayor Marino noted the City’s sewer project and whether such funds could be used therefor, as well as for street paving. Also, Vice Mayor Marino remarked that he would like to assist the Mission in relocating. Councilmember Ferrari noted the bridges that the City is responsible for and the possibility of using such funding therefor as well as to make a payment(s) on the Fire Department’s new ladder truck. Mayor Kennedy commented on the importance of expanding broadband with Clarksburg Water Board President Al Cox commenting that a key goal of the ARP monies is to improve infrastructure and noted water projects of the Water Board that the Water Board would like to partner with the City to have addressed.

Concluding discussion, meeting adjourned.

E. Ryan Kennedy, Mayor  
Approved: April 15, 2021

Annette Wright, City Clerk
AN ORDINANCE OF THE CITY OF CLARKSBURG TO AMEND SECTION 745 REGARDING TAX CREDITS TO REENACT THE SAME AND ADD A TAX CREDIT FOR A NEW BUSINESS LOCATION WITH CONSTRUCTION COSTS

WHEREAS, Codified Ordinance 745 provides tax credits for business and occupation taxes under certain conditions;

WHEREAS, such tax credits have been provided to generate economic development within the City or in certain parts thereof;

WHEREAS, City Council further desires to encourage economic development within its corporate limits;

WHEREAS, City Council desires to provide business and occupation tax credits to persons who situate new business locations within its corporate limits and expend substantial amounts in construction costs;

WHEREAS, such ordinance is subject to other changes to more effectively manage it.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY OF CLARKSBURG, WEST VIRGINIA, AS FOLLOWS:

745.42 BUSINESS ENHANCEMENT - TAX CREDIT DEFINITIONS.

(a) "New business" means any new commercial, wholesale, retail, manufacturing, professional service business, and all other service business excluding financial institutions, public utilities, local cable television companies, contractors, transient businesses, and business involving rental property, which physically locates its principal place of business within the corporate limits of the City within specified and designated commercial areas of the City, defined in this article, either by purchase of real property or by virtue of a rental agreement or lease and whose gross receipts are subject to the City's business and occupation tax, and is not currently paying such tax provided that "New Business" shall not include an existing business located within a designated eligibility area which simply changes its business name or form of entity.

(b) "Professional service business" includes medical offices, doctors, dentists, lawyers, accountants, engineers, architects, surveyors, real estate, appraisers, etc.

(c) "Annexed business" includes existing commercial, wholesale, retail, manufacturing, or service businesses which are brought within the corporate limits of the City by way of annexation by minor boundary adjustment.

(d) "Expanded business" includes existing commercial, wholesale, retail, manufacturing, or service businesses, excluding financial institutions, public utilities, local cable television company, and businesses involving residential rental property, which have their principal place
of business physically located within the corporate limits of the City which have been renovated, modernized, enlarged, etc. and those businesses which have been acquired by another person or entity for the purpose of continuing the same business operation while increasing the economic productivity of the business. Expansion of business shall not include business maintenance and repair expenses and exterior building improvements.

(e) "New employee" means a person who is hired and employed in a new business, annexed business, or expanded business, who was not previously employed within the corporate limits of the City by such business. A new employee shall be employed at least 40 hours per week.

(f) "New job" means a job which is directly attributable to the qualified investment and is filled by a new employee hired by the business.

(g) "Central Business District" for the purpose of this article, includes any business located in the area described and as follows:

1. Washington Avenue from Water Street to Chestnut Street; from the intersection of West Main Street and Chestnut Street down West Main Street to the intersection at West Main Street and West Pike Street at the area known as the "Angle".

2. Pike Street from Monticello Avenue to the intersection of West Pike Street and West Main Street at the area known as the "Angle".

3. Main Street from Monticello Avenue to the intersection of West Pike Street and West Main Street at the area known as the "Angle".

4. South 2nd, 3rd, 4th, 5th, and 6th Streets between Washington Avenue and Elk Creek.

5. Traders Alley between South 2nd Street and South Chestnut Street.

6. Hewes Avenue between South 2nd Street and South 6th Street.

(h) "Glen Elk I District" is that district which as the following boundaries: Beginning at the intersection of Baltimore Avenue and North Third Street; thence northwest along Baltimore Avenue to Elk Street; thence southerly along Elk Street to Werninger Street; thence southeast along Werninger Street to Ford Street; thence along Ford Street to North Fourth Street; thence along North Fourth Street to Clark Street; thence southeast along Clark Street to North Third Street; thence northeast along North Third Street to the beginning.

(i) "Glen Elk II District" is that district which has the following boundaries: Beginning at the intersection of Delaware Avenue and Ohio Avenue; thence northwest along Ohio Avenue to North Eighth Street; thence northeast along North Eighth Street to Pennsylvania
Avenue; thence southeast along Pennsylvania Avenue to Delaware Avenue; thence south along Delaware Avenue to the beginning.

(j) "Business and Technology Centre" is that area formerly known as West Virginia Life Science Center which contains approximately 811.2 acres, more or less, which is more particularly described in the Harrison County Commissioners Orders at page 193.

(k) Montpelier Addition Commercial Area is that area to include Ohio Avenue between Stiles Street and North Florence Street and those portions of Stiles Street and Snyder Street which are currently zoned for business.

745.43 PURPOSE OF GRANTING TAX CREDITS FOR NEW AND EXPANDED BUSINESSES.

The general purpose and objective of Sections 745.42 through 745.52 which involve the granting of tax credits for new and expanded businesses and annexed businesses is to encourage business development within the corporate limits of the City, including but not limited to the following in the following designated areas:

(a) Central Business District -- greater retail and service oriented uses;

(b) Glen Elk I - greater retail and commercial uses;

(c) Glen Elk II & Montpelier Addition Commercial Area - greater commercial light industrial uses;

(d) Business & Technology Centre -- greater light industrial uses which create new jobs.

(e) Heavy Industrial (I2) Zones - commercial uses which create jobs;

(f) Annexed areas -- to increase City's tax base.

745.44 APPLICATION FORM; REQUIREMENTS.

Application forms developed by the Director of Finance must be completed and filed by the business owner in order for the business to be considered for a B & O tax credit. The original application is to be filed with the Director of Finance with a copy of the application also being filed with the City Manager's office and with the Office of the Director of Economic & Community Development. After the filing of an application form, there shall be a review and investigation of the application of the business by the Director of Finance. After the investigation the Finance Director shall issue a decision regarding the eligibility of the business for a tax credit and will notify the applicant in writing of his decision. Any written rules, regulations, and forms shall be established by the Finance Director and shall be made available to all interested businesses upon their request.
745.45 AMOUNT OF CREDIT ALLOWED.

(a) Central Business District - Glen Elk I.

(1) Any person who locates a new business, other than a professional service business, within the Central Business District or Glen Elk I, is entitled to receive a tax credit of one hundred percent (100%) of the business and occupation tax owed for each quarter of the first tax year, seventy-five percent (75%) for each quarter of the second tax year, and fifty percent (50%) for each quarter of the third tax year. The maximum tax credit for the tax credit period cannot exceed fifty thousand dollars ($50,000).

(2) Any person who locates a new professional service business within the Central Business District or in Glen Elk I, is entitled to receive a tax credit of fifty percent (50%) of the business and occupation tax owed for each quarter of the first year of operation and twenty-five percent (25%) of the business and occupation tax owed for each quarter of the second year of operation. The maximum tax credit for the tax credit period cannot exceed fifty thousand dollars ($50,000).

(3) Any person who expands an existing business within the Central Business District or Glen Elk I and makes a qualified investment of ten thousand dollars ($10,000) or more, and is entitled to receive a tax credit for the incremental increase in taxes over the prior year’s business and occupation taxes paid (defined as the qualifying year). The amount of the tax credit shall be equal to one hundred percent (100%) of the incremental increase of taxes over the qualifying year’s actual taxes paid for the first year; seventy-five percent (75%) of the incremental increase of taxes over qualifying year’s actual taxes paid for the second year; and fifty percent (50%) of the incremental increase of taxes over qualifying year’s actual taxes paid for the third and final year. The maximum tax credit for the tax credit period cannot exceed fifty thousand dollars ($50,000).

(b) Glen Elk II - Montpelier Commercial Area.

(1) Any person who locates a new business in Glen Elk II or the Montpelier Addition Commercial Area is entitled to a tax credit of fifty percent (50%) of the business & occupation tax owed for each quarter of the first tax year, and twenty-five percent (25%) for each quarter of the second tax year. The maximum tax credit for tax credit period cannot exceed fifty thousand dollars ($50,000).

(2) Any person who expands an existing business in Glen Elk II, by making a minimum qualified investment of one hundred thousand dollars ($100,000) which results in the creation of a minimum of five new jobs, is to be entitled to receive a tax credit of fifty percent (50%) of the incremental increase of business and occupation taxes resulting from the expansion and in the first year of operation after expansion and twenty-five percent (25%) of the incremental increase of business and occupation taxes of the second year of operation after
expansion. The maximum tax credit for the tax credit period cannot exceed fifty thousand dollars ($50,000).

(c) Any person who locates a new business within any area currently zoned I-2, by making a minimum qualified investment of two hundred twenty-five thousand dollars ($225,000), which includes the purchase of real property or lease of property for a period of at least ten years, which creates a minimum of five new jobs, is entitled to receive a tax credit of fifty percent (50%) of the business & occupation tax owed for each quarter of the first tax year, and twenty-five percent (25%) for each quarter in the second tax year. The maximum tax credit for the tax credit period cannot exceed one hundred thousand dollars ($100,000).

(d) Business & Technology Centre.

(1) Any person who locates a new business within the Business & Technology Centre by making a minimum qualified investment of at least two hundred twenty-five thousand dollars ($225,000), which includes the purchase of real property at the center or lease of the property for a period of at least ten years, and which creates a minimum of fifteen new jobs, is entitled to receive a tax credit of one hundred percent (100%) of the assessed business and occupation tax owed for each quarter of the first tax year, seventy-five percent (75%) for each quarter of the second tax year, and fifty percent (50%) for each quarter of the third tax year. The maximum tax credit for the tax credit period cannot exceed one hundred thousand dollars ($100,000).

(2) Any person who expands an existing business within the Business & Technology Centre of this City which causes the immediate creation of a minimum of ten or more new jobs which continue for at least the two year credit period, is entitled to receive a tax credit of seventy-five percent (75%) of the incremental increase in Business & Occupation taxes in the first year of operation after expansion and twenty-five percent (25%) of the incremental increase in business and occupation taxes in the second year of operation after expansion. The maximum tax credit for the tax credit period cannot exceed one hundred thousand dollars ($100,000). (Ord. 96-18. Passed 7-18-96.)

(e) If a person who currently operates a business which is not located within the City’s corporate limits, and the gross receipts of the business would be subject to the City’s business and occupation tax if such business was located within the City’s corporate limits, petitions to bring the property into the City through annexation, the business is entitled to receive a tax credit of one hundred percent (100%) of the amount owed for business and occupation taxes for each quarter in the first three years after annexation. The date of annexation will be the date the County Commission issues the final annexation order. The total maximum cumulative amount of tax credit (total B&O taxes owed) for the three-year period of the tax credit shall be one hundred thousand dollars ($100,000) for each individual taxpayer separately licensed by the City.
“Individual taxpayer” means a business to be separately licensed by the City and separately licensed by the State of West Virginia.

The tax credit shall not apply to the B&O taxes on the rental income received by the owner of the property which is annexed. The credit applies only to gross income of businesses operating within the annexed property.

For any service business which is annexed into the City, where a portion of the gross income of the business is derived from services performed in a location in the City’s corporate limits other than the service business’ premises, said portion of such gross income is not eligible for the tax credit. (Ord. 98-33. Passed 10-15-98.)

(f) Special Tax Credit - Reopening of Business Damaged by Fire, Flood, etc. If any existing business located within the corporate limits of Clarksburg is damaged by fire, flood, etc., and the dollar amount of damage to the business is greater than fifty per cent (50%) of the fair market value of the real and personal property of the business, such business will be entitled to receive a "special" tax credit, if the business is completely remodeled and reopened and all jobs existing at the time the damage occurs are retained. The amount of the tax credit will be fifty percent (50%) of the business & occupation taxes owed for each quarter in the first year after the business is reopened.

(g) Any person who expands an existing business anywhere else within the corporate limits of the City and who makes a qualified investment of one hundred thousand dollars ($100,000) or more, is entitled to receive a tax credit of seventy-five percent (75%) of the incremental increase in business & occupation taxes in the first year of operation after expansion, and twenty-five percent (25%) of the incremental increase in business and occupation taxes in the second year of operation after expansion. The maximum tax credit for the tax credit period cannot exceed one hundred thousand dollars ($100,000).

(h) (1) Special business tax credit - full time job creation. Any person who locates a new service business after May 1, 1999, within the Central Business District, the Business and Technology Centre, Glen Elk I District, Glen Elk II District, or any heavy industrial (I2) zone, which business has not been located in the City in the previous ten (10) years shall be entitled to receive a tax credit of one hundred percent (100%) of the business and occupation tax owed for each quarter of the first three (3) tax years inclusive of the date such new service business is first so located, commencing on the date such new service business is first so located within the corporate limits of the City, contingent on creation and retention of 100 full-time jobs in each quarter of the first three (3) tax years.

For each quarter of the fourth through tenth tax years, such new service business shall be entitled to the following tax credits based upon the creation of the new jobs in each such year inclusive of those in existence at the end of the first three
(3) year period:

<table>
<thead>
<tr>
<th>Tax Year</th>
<th>New Jobs Created</th>
<th>Tax Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 - 10</td>
<td>700 or more</td>
<td>100%</td>
</tr>
<tr>
<td>4 - 10</td>
<td>400 - 699</td>
<td>75%</td>
</tr>
<tr>
<td>4 - 10</td>
<td>200 - 399</td>
<td>50%</td>
</tr>
<tr>
<td>4 - 10</td>
<td>Less than 200</td>
<td>0%</td>
</tr>
</tbody>
</table>

After the tenth tax year, such new business shall not be entitled to any tax credit. The purpose and objective of this subsection is to encourage new business development and the creation of new jobs within the City.

(2) Special business tax credit - full time job creation. Any person who locates a new business after January 1, 2011 outside of the Central Business District, the Business and Technology Centre, Glen Elk I District, Glen Elk II District, or any heavy industrial (12) zone, which business has not been located in the City in the previous ten (10) years shall be entitled to receive a tax credit of one hundred percent (100%) of the business and occupation tax owed for six (6) full months inclusive of the date such new business is first so located, commencing on the date such new business is first so located within the corporate limits of the City, contingent on creation and retention of 20 full-time jobs in each quarter of the first six (6) tax months following creation of the business. The purpose and objective of this subsection is to encourage new business development and the creation of new jobs within the City.

(3) Verification - retention of jobs. The required number of jobs to be created and retained by any new business to qualify and be eligible for the tax credit provided by this subsection shall be based on the actual number of full-time employees on the payroll of the new service business during the first month of each calendar quarter, or January, April, July and October of the year in which such tax credit is claimed.

The new business shall provide actual copies of payrolls certified as true and accurate by the appropriate managerial officer of the new business as well as an independent auditor to the office of the Director of Finance for each of the calendar quarter within ten (10) days after the end of each calendar quarter for which the credit is claimed. The Director of Finance may, at the Director’s discretion, request additional payroll information and shall make a determination as to whether the new business qualifies for tax credit under the provisions of this article.

(4) Credits not cumulative. The tax credit provisions of this section shall be in lieu of, and not in addition to any of the credits allowed under Section 745.45, subsections (a) through (g), in the event that the number of new full-time jobs created exceed ninety-nine. The eligibility for tax credits permitted under subsections (a) through (g) will remain for new businesses and expanded businesses that create less than 100 full time jobs.
(5) Administration. The Director of Finance shall have the authority to promulgate written rules, regulations, and requirements not inconsistent with the provisions of this subsection for the ongoing administration of any tax credit claimed hereunder.

   (i) Special business tax credit – new business location with minimum construction expenditures. Any person who locates a new business, after May 1, 2021, within the corporate limits of Clarksburg, which business has not been previously located within the corporate limits of the City, shall be entitled to receive a tax credit of one hundred percent (100%) of the business and occupation tax owed for each quarter of the first two (2) years inclusive of the date such new business is open within the corporate limits of the City, contingent on the person making a qualified investment of construction costs, including demolition, site work, and/or any professional services such as engineering or architectural, of at least one million dollars ($1,000,000) in the business’s location, not including the purchase or lease of the property.

745.46 ADMINISTRATION OF TAX CREDIT PROGRAM.

   (a) The administration of Sections 745.42 through 745.52 is vested in, and shall be exercised by the Director of Finance, who, in connection therewith, shall prescribe all necessary forms.

   (b) The Director of Finance may prescribe necessary rules and regulations that are in conformity with Sections 745.42 through 745.52, for administration of the Business Enhancement provisions.

   (c) The Director of Finance may conduct an annual audit of each business approved for a tax credit to determine the continued eligibility of the business and to certify that job levels created under these ordinance provisions are sustained for the required periods.

   (d) All businesses requesting a tax credit and those granted a tax credit hereunder shall agree to make all their financial records available for inspection and audit by the City and shall provide copies of all annual audited financial statements upon request.

   (e) The amount of any approved tax credit shall be reviewed annually by the Director of Finance to determine continued eligibility of the business for the credit. If any credit is based on the creation of new jobs, and, if at any time the number of new jobs is reduced, below the minimum requirement, the business will lose eligibility for the credit. The procedure for verification of jobs and employment levels will be developed by the Director of Finance.

   (f) All businesses approved for a tax credit hereunder shall file a quarterly B & O tax return and report gross income to the City as required by Section 745.04.

   (g) The amount of any tax credit allowable begins with the taxable year in which the taxpayer places the qualified investment into use within this City and continues thereafter.
(h) No application for a tax credit will be considered and no credit will be otherwise granted to any existing business who, at the time application is made, is delinquent in the payment of City business and occupation taxes or other applicable taxes.

(i) Once a business is granted a tax credit under this article, the business is not allowed another tax credit under this article for at least five years from the date the initial credit was granted. A business is only eligible for one tax credit under this article at a time and tax credits are not stackable.

(j) In no case will a tax credit be granted to any person who conducts business activity from their residence.

(k) On an annual basis the Director of Finance and City Manager shall be required to submit a summary report to Council on applications for tax credits which were approved and the amount of tax credits granted to businesses. (Ord. 96-18. Passed 7-18-96.)

(l) Any business which has been approved for a tax credit pursuant to the provisions of this Article shall have any such credit revoked and declared ineligible for further credits upon the occurrence of any of the following:

(1) Failure to submit the application required by Section 745.44 hereof within thirty (30) days of opening for business.

(2) Failure to obtain or renew its municipal business license.

(3) Failure to obtain a Certificate of Use and Occupancy Permit for its business location or locations.

Effective Date: This Ordinance shall be effective upon passage.

PASSED by Council of the City of Clarksburg on FIRST READING on this ___ day of __________, 2021.

PASSED by Council of the City of Clarksburg on SECOND AND FINAL READING, following a public hearing, on this ___ day of __________, 2021.
E. Ryan Kennedy, Mayor

ATTEST:

_________________________________
ANNETTE M. WRIGHT
CITY CLERK

APPROVED AS TO FORM

_________________________________
RICHARD R. MARSH
CITY ATTORNEY
AN ORDINANCE OF THE CITY OF CLARKSBURG TO CREATE AN ORDINANCE LICENSING AND SETTING FORTH RESTRICTIONS ON MOBILE FOOD VENDORS

WHEREAS, Mobile Food Vendors have been operating or expressing a desire to operate within the City;

WHEREAS, Council desires to encourage Mobile Food Vendors to operate within the City;

WHEREAS, the current ordinances regarding transient merchants and peddlers do not serve to encourage operating within the City as opposed to other localities;

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY OF CLARKSBURG, WEST VIRGINIA, AS FOLLOWS:

MOBILE FOOD VENDORS

Section 1 - PURPOSE.

The Council finds that allowing mobile food vendors to operate, subject to practical regulations and limitations, is beneficial to persons living and working within the city. This article recognizes the unique physical and operational characteristics of mobile food vending, establishes standards for mobile food vending operations, and promotes practices that serve the health, safety, and welfare of the public.

Section 2 - DEFINITIONS.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1) **Commissary** means a permitted establishment or facility in a fixed location that is used for the storage of supplies for a mobile food service vehicle, the preparation of food to be sold or served at a mobile food service vehicle, or the cleaning or servicing of a mobile food service vehicle or the equipment used in conjunction with a mobile food service vehicle.

2) **Edible food products** means those products that are ready for immediate consumption, including prepackaged food and food cooked, prepared or assembled on-site. The term "edible food products" does not include fresh produce unless the produce has been packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption.

3) **Food truck** means a vehicle from which edible food products are cooked, prepared or assembled with the intent to serve or sell such items to the general public, provided further that food trucks may also serve or sell other edible food products and beverages that have been prepared or assembled elsewhere. Food truck operators may market their products to the public via advertising, including social media.

4) **Food truck rally** means a gathering of more than five food trucks that may or may not have been coordinated or advertised. A food truck rally requires a special event license.
(5) *Ice cream truck* means a vehicle from which the operator sells only pre-packaged frozen dairy or water-based food products and pre-packaged beverages. For purposes of this article, a non-motorized cart from which such products are sold shall be considered an ice cream truck.

(6) *Location* means any single property parcel, any combination of contiguous parcels that are owned or controlled by a single entity or affiliated entities, the abutting public ways of afore-described properties, or all public ways consisting of or greater than two contiguous city blocks, regardless of abutting ownership or control.

(7) *Mobile food service vehicle* means a food truck, canteen truck, or ice cream truck and includes any portable unit that is attached to a motorized vehicle and intended for use in the operation of a food truck, canteen truck or ice cream truck.

(8) *Mobile food vendor permit* means a permit issued by the city for the operation of a mobile food service vehicle.

(9) *Operate* means to serve or sell food, beverages, and other permitted items from a mobile food service vehicle and includes all tenses of the word. Operator means any person operating or permitted to operate a mobile food service.

(10) *Permit administrator* means the City’s Director of Finance to oversee the issuance, suspension, and revocation of mobile food vendor permits.

(11) *Vehicle* means every device in, upon or by which any person or property may be transported or drawn upon a street, including devices moved by human power.

Section 3 - GENERALLY.

(a) It is a violation to operate a mobile food service vehicle at any location except in compliance with the requirements of this article.

(b) Mobile food service vehicle operators must comply with all federal, state, and local licensing and permitting regulations and all business and occupation tax, sales tax, and other tax requirements.

(c) All mobile food service vehicle must comply with the zoning ordinance and all zoning requirements set forth in these Ordinances. If a use to which a mobile food service vehicle is to be put is disallowed by zoning law in a designated zone or district, it shall not otherwise be permitted under this article.

(d) The permit administrator is hereby authorized to promulgate rules and regulations supplemental to the provisions herein for the purpose of carrying out the administration and enforcement of such provisions.

(e) The sole activity that may be exempted from zoning ordinance compliance set forth in subsection (c) herein shall be for vendors whose business is itinerant in nature and where the vendor stops solely for the purpose of making a sale or sales and remains in one area, hereby designated as one city block, for less than ten minutes. Further, door to door sales of food items not intended for immediate consumption, as well as the home delivery of prepared food, shall be exempted from subsection (c).
Section 4 - LOCATIONS AND HOURS OF OPERATION.

(a) Food trucks.

(1) Right-of-way/public property. Food trucks may not operate within the public right-of-way or on any city property except as may be specifically allowed by the city. When allowed in the public right-of-way, a food truck must be positioned so as to comply with the requirements of Section 5 herein. Operation of food trucks within any park shall be subject to rules and regulations established by the Board of Park Commissioners. Operation of food trucks on city streets adjacent to any park shall be governed by this article. Operating of any food truck within any City-owned off-street parking facilities shall be subject to rules and regulations established by the Parking Authority. Food trucks shall not operate on property owned by a public entity other than the city unless specifically allowed by such public entity. No unattended food truck shall be left at any time in the right-of-way or parked on any other public property overnight. Notwithstanding any other provision contained in this article, no food truck may operate on the public right-of-way directly fronting, partially fronting, or abutting an existing restaurant, concession stand, or any other entity serving prepared meals or food during business hours.

(2) Private property. A food truck with a current mobile food vendor permit may operate on private property if allowed as a permitted use under the zoning ordinances of this Code, subject to the following conditions:

A. Permission. Food trucks selling to the public from private property shall have the written permission of the property owner, which shall be made available to the city immediately upon request.

B. Maximum number of food trucks. No more than ten food trucks may operate at any location unless a special event license has been issued.

C. Placement on lot. Food trucks not parked within designated parking spaces shall not block fire lanes, designated traffic lanes, or ingress or egress to or from a building or street.

(3) Hours of operation. Food trucks may operate beginning at 6:00 a.m. and ending at 3:00 a.m. in the downtown business district or any other district not identified as a residential district in the zoning ordinance. The city may place other restrictions on an operator's mobile food vendor permit, or the hours of operation may be more restrictive in accordance with a property owner's directive when private property is used. The city may permit extended hours of operation for a licensed special event.

Section 5 - OPERATING REQUIREMENTS.

(a) Vehicle requirements.

(1) Design and construction. Mobile food service vehicles must be designed and constructed for the purpose of preparation and sale of the specific type of food being sold, or they must be so modified to comply with this Article and all applicable public health and safety laws.
(2) **Licensing.** Mobile food service vehicles must be licensed and equipped in accordance with the rules and regulations of all local, state, and federal agencies having jurisdiction over such vehicles. The preparation and sale of food from mobile food service vehicles must comply with all applicable local, state, and federal laws and regulations.

(b) **Right-of-way.**

(1) Mobile food service vehicles other than ice cream trucks may not operate, stop, stand, or park in any area of the right-of-way that is intended for use by vehicular travel, except in the event of a street closure for a special event. Mobile food service vehicles, including ice cream trucks, may not operate, stop, stand, or park that in any way violates the provisions of the traffic control ordinances of this Code, impedes the flow of traffic, interferes with ingress or egress or from any property or presents an unsafe condition for patrons, pedestrians, or other vehicles.

(2) Mobile food service vehicles on any street shall park facing the same direction as traffic, at a distance of no more than 12 inches between the curb face or edge of pavement and with the service window of the vehicle facing the curb or edge or pavement.

(3) When a mobile food service vehicle is allowed to operate in the public right-of-way, no seating area shall be provided, except as permitted in conjunction with a street closure for a special event or if there is an area provided on a paved sidewalk that permits compliance with subsection (d) of this section.

(c) **Business access.** No mobile food service vehicle may operate in a location that impedes the ingress to or egress from another business or otherwise causes undue interference with access to another business.

(d) **Pedestrians.** If on or adjacent to a sidewalk, the components of a mobile food service vehicle's operations, including signage, seating areas, and patron queue may not reduce the clear pedestrian path of travel on the sidewalk to less than four feet. All awnings or canopies of the vehicle shall be at least six feet, eight inches above the sidewalk.

(e) **Safety and fire prevention.** All mobile food service vehicles must be equipped with fire extinguishers. No power cord, cable, or equipment shall be extended across any public street or sidewalk.

(f) **Noise.** No sounds that are otherwise prohibited by this Code may be produced by a mobile food service vehicle’s operation. All generators used by food trucks must comply with all applicable noise ordinances. The permit administrator may request a demonstration of the generator at any time. If, in the opinion of the permitting authority the generator either violates any noise ordinance, or if it would cause undue annoyance or inconvenience to the public or to residences, the permit may be refused or revoked until a satisfactory alternative is provided.

(g) **Support methods.** No mobile food service vehicle may use stakes, rods, or any other method of support that must be drilled, driven, or otherwise fixed into or onto asphalt, pavement, curbs, sidewalks, or buildings.

(h) **Waste collection.** The area of a mobile food service vehicle operation must be kept neat and orderly at all times. Operation of a mobile food service vehicle in an area is deemed
acceptance by the operator of the responsibility for cleanliness of the area surrounding the operations regardless of the occurrence or source of any waste in the area. During each period of operation at a location, the operator must provide proper trash receptacles for public use that are sufficient and suitable to contain all trash generated by the mobile food service vehicle. All trash receptacles must be emptied when full, and all waste must be removed prior to departure of a mobile food service vehicle from a location.

(i) **Pedestrian service only.** Mobile food service vehicles shall serve pedestrians only. Drive-through or drive-in service is prohibited.

(j) **Signage.** Signage for each mobile food service vehicle shall be limited to signs on the exterior or interior of the vehicle and one sandwich board sign. All signs on the exterior of the vehicle shall be secured and shall not project more than six inches from the vehicle. One sandwich board sign may be placed outside the mobile food service vehicle, provided that the base of a sandwich board sign must be placed no further than two feet beyond the mobile food service vehicle. Sandwich board signs shall not exceed eight square feet per side or 48 inches in height and shall not obstruct or impede pedestrian or vehicular traffic. The restrictions on sandwich boards shall not apply when the mobile food service vehicle is parked and/or operating in a parking lot.

(k) **Alcohol Sales.** Food trucks may not sell alcoholic beverages, except as may be specifically allowed by applicable state law and city ordinance. Ice cream trucks are prohibited from selling alcoholic beverages.

(l) **Insurance.**

(1) Mobile food service vehicles must maintain all motor vehicle insurance coverage required by applicable state and federal laws and regulations.

(2) Mobile food service vehicles operating on city property other than the right-of-way shall at all times maintain such further insurance coverage as may be required by the regulations promulgated by the Council or the governing board. In the event the required coverage is not properly maintained, permission to operate on city property will be immediately revoked.

(m) **Exterior cooking equipment.** Any food preparation equipment outside of the mobile food service vehicle shall not obstruct vehicular or pedestrian traffic, and the use and operation of such equipment shall not create safety hazards for the public.

(n) **Commissary.** A commissary, as defined in this article, shall not be located in any residential zoning district unless permitted as a home occupation in compliance with the zoning ordinance and applicable Health Department requirements.

Section 6. MOBILE FOOD VENDOR PERMITS

(a) **Required.** The designated permit administrator shall oversee the issuance, suspension, and revocation of mobile food vendor permits. No mobile food service vehicle may operate within the city without a mobile food vendor permit issued by the city. A mobile food vendor permit authorizes the holder only to engage in the vending of products from a mobile food service vehicle in compliance with this Ordinance and as specified on the permit.
(b) *Exception.* This section shall not apply to contractual arrangements between a mobile food service vehicle operator and any individual, group, or entity for pre-arranged catering at a specific location for a period of not more than four hours, provided that the mobile food service vehicle is not open to or serving the general public.

(c) *Application.*

(1) To obtain a mobile food vendor permit, a mobile food service vehicle operator must complete an application form provided by the city. The application shall include the following information:

A. Name and address of the owner of the vehicle.

B. Name and address of the business owner and the vehicle identification number (VIN) of the vehicle used as a mobile food service vehicle.

C. A certificate of insurance coverage, including required motor vehicle insurance coverage.

D. A signed acknowledgement that the operator has read this article and will comply with all applicable requirements herein.

E. Any additional information required by the permit administrator.

(2) Submittal of an application for a mobile food vendor permit must be accompanied by payment of an application fee in the amount of $50, provided that for any mobile food service vehicle previously found to be operating within the city without a current permit, the application fee shall be $100.

(3) Each applicant must also have a City business license as required by Article 711 or be applying for such license as part of the application process.

(4) Each mobile food vendor permit holder shall have an ongoing duty to provide the city with notice of any change to any of the information submitted with its permit application.

(d) *Issuance.* A mobile food vendor permit shall be issued upon verification that an application has been completed in accordance with the requirements of this section, except that no such permit will be issued to an operator whose permit is currently suspended or has been revoked within the preceding 12 months, or to any person who intends to operate the same mobile food service vehicle for which the operator's permit is currently suspended or has been revoked within the preceding 12 months. If the permit administrator denies the application, such denial shall be in writing and provided to the applicant within 15 days of receipt of the application.

(e) *Expiration and transferability.* A mobile food vendor permit expires at change of ownership or remodeling of the mobile food truck. A mobile food vendor permit may not be transferred. The operator of the mobile food service vehicle shall notify the city within ten days of any such sale or remodeling and shall update any information that has been changed since the submittal of the application for the mobile food vendor permit.
Section 7. ENFORCEMENT

(a) Citation. Each of the following circumstances constitute a violation of this article, for which a citation may be issued by a code enforcement officer or police officer of the city:

1. Operation of a mobile food service vehicle without a current, valid permit, provided further that each day and each separate location at which a mobile food service vehicle is operated without a current, valid permit shall be considered a separate violation.

2. Holding a food truck rally without a special event license or failing to comply with the conditions of approval for a special event license.

3. Failure to comply with any other provision of this article.

(b) Suspension of permit. A mobile food vendor permit shall be suspended by the permit administrator if:

1. The applicant for the permit knowingly provided false information on the application.

2. Two violations of this article have occurred within a six-month period in conjunction with the mobile food service vehicle for which the permit has been issued.

3. The operator of a mobile food service vehicle fails to maintain a current, valid vehicle registration, health department permit, business license or proof of required motor vehicle insurance coverage.

4. The permittee has failed to pay taxes or licenses as they become due.

(c) Revocation of permit. A mobile food vendor permit shall be revoked by the permit administrator if:

1. Four violations of this article have occurred within a 12-month period.

2. A mobile food service vehicle is operated in an unlawful manner so as to constitute a breach of the peace or otherwise threaten the health, safety or general welfare of the public.

(d) Reinstatement.

1. Suspended permit. An operator may reinstate a suspended mobile food vendor permit by taking such actions as may be necessary to correct a mobile food service vehicle's noncompliance and paying a reinstatement fee of $500 to offset the city's cost of enforcement measures, inspections and compliance verifications.

2. Revoked permit. An operator whose mobile food vendor permit has been revoked may apply for a new permit after 12 months from the date of revocation, provided the operator has taken such actions as may be necessary to correct a mobile food service vehicle's noncompliance. The operator shall pay a permit reinstatement fee of $500 to offset the city's cost of enforcement measures, inspections and compliance verifications.

3. No permit will be issued to any person who intends to operate the same mobile food service vehicle for which the operator's permit is currently suspended or has been revoked within the preceding 12 months.

(e) Notice. Notice of the suspension or revocation of a mobile food vendor permit shall be issued to the operator in writing by the permit administrator.
Section 8 - APPEALS.

(a) *Filing.* The denial, suspension, or revocation of a mobile food vendor permit by the permit administrator may be appealed by filing a written notice of appeal, establishing the grounds for the appeal, with the City Manager or designee no later than ten business days following receipt of the notice of denial, suspension, or revocation.

(b) *City Manager’s review.* When an appeal is filed with the City Manager as set forth herein, the City Manager or his designee may request such additional information from the operator and the permit administrator as may be deemed necessary. At the City Manager’s or designee’s discretion, the appeal may be decided based on the written information and documentation submitted, or a hearing may be scheduled with the operator and the permit administrator. The City Manager’s decision shall be issued in writing, based on a written summation of the pertinent facts, and shall be final. The City Manager may reverse the denial, suspension, or revocation of a permit, or may reduce the waiting period required for reinstatement of a revoked permit if it is determined that the operator has taken reasonable steps to mitigate the violations leading to the revocation and to prevent future violations.

(c) *Refunds.* There shall be no refund of an application fee for a mobile food vendor permit that has been denied. There shall be no refund of a reinstatement fee for a suspended or revoked permit unless the City Manager or his designee determines on appeal that the permit administrator acted in error in suspending or revoking the permit.

Section 9 - MISCELLANEOUS.

(a) In case of conflict between this ordinance or any part hereof, and the whole or part of any existing ordinance of the city, the provision that establishes the higher standard shall prevail.

(b) If any section, subsection, clause, provision, or portion of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, subsection, clause, provision or portion of this article.

Effective Date: This Ordinance shall be effective upon passage.

PASSED by Council of the City of Clarksburg on FIRST READING on this ___ day of _______, 2021.

PASSED by Council of the City of Clarksburg on SECOND AND FINAL READING, following a public hearing, on this ___ day of _______, 2021.

E. Ryan Kennedy, Mayor
ATTEST:

ANNETTE M. WRIGHT
CITY CLERK

APPROVED AS TO FORM:

RICHARD R. MARSH
CITY ATTORNEY
AN ORDINANCE ADJUSTING COMPENSATION OF CITY COUNCIL MEMBERS

WHEREAS, as part of their compensation, Council members are currently provided with health insurance coverage;

WHEREAS, pursuant to Section 5 of the City’s Charter, the salary of the Mayor and Council shall be fixed by ordinance;

WHEREAS, pursuant to West Virginia Code § 8-5-12, the compensation of municipal officers shall be made by ordinance;

WHEREAS, West Virginia Code § 8-5-12 prohibits increasing or decreasing a municipal officer’s compensation during such officer’s term;

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY OF CLARKSBURG, WEST VIRGINIA, AS FOLLOWS:

Section 115. Compensation of Council members

The City shall not provide Council members with health care coverage, including, but not limited to, the provision of medical, dental, or eyecare insurance through a group or individual policy or by providing a stipend or reimbursement intended for the payment of the same. This provision shall not apply to any Council member whose current term began on or before July 1, 2019, until such Council member ceases to be a member and then is later appointed or elected to rejoin the Council.

Effective Date: This Ordinance shall be effective upon passage.

PASSED by Council of the City of Clarksburg on FIRST READING on this ___ day of _________, 2021.

PASSED by Council of the City of Clarksburg on SECOND AND FINAL READING, following a public hearing, on this ___ day of _________, 2021.

E. Ryan Kennedy, Mayor

ATTEST:

____________________
ANNETTE M. WRIGHT
CITY CLERK

APPROVED AS TO FORM:

____________________
RICHARD R. MARSH
CITY ATTORNEY