

City of Clarksburg

West Virginia

**MUNICIPAL HOME RULE PILOT
PROGRAM APPLICATION**

MUNICIPAL HOME
RULE PILOT PROGRAM
PHASE II

Senate Bill 317 / March 2014

*APPLICATION
CHECKLIST*

Municipal Home Rule Pilot Program Phase II

APPLICATION CHECKLIST

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3	Specific Issue(s) to be Addressed
3	Issue(s) Category: Tax/Organization/Administrative/Personnel/Other

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6-22	Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.
6-22	Proposed solution(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include: 1) Proposed solution(s) in one of the five areas (tax/administrative/organization/ personnel/other) 2) If revenue related, estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.

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CITY OF CLARKSBURG

222 WEST MAIN STREET • CLARKSBURG, WV 26301 • PH. (304) 624-1673 • FAX (304) 624-6135

OFFICE OF THE MAYOR

March 19, 2014

West Virginia Home Rule Pilot Program
West Virginia Department of Commerce
State Capital Complex
Building 6, Room 525
Charleston, West Virginia 25303

Re: Home Rule Application

Dear Home Rule Pilot Program Committee:

On behalf of the citizens and elected leaders of Clarksburg, I thank you for your consideration of our City's application to participate in the pilot program for home rule. This is an exciting and proven approach for our state which exemplifies the connections between municipal governments and the people they serve in cities throughout West Virginia. We have done our very best to take a responsible approach throughout this application to demonstrate that Home Rule will contribute greatly to the lives of people who live, work and play in our city.

Local government is most responsive and responsible when it is close to the people it serves. While being recently elected to City Council and then selected as Mayor by my fellow Council Members, I truly understand that the elected leaders of Clarksburg know that we have close and frequent contact with our constituents, more than any elected officials within our various levels of government, ranging from County to State levels. As such, we also know that our constituents can, will and do respond decisively and effectively any time we fail to represent them in a responsive and responsible way. It should not be mistaken; our citizens take full advantage of their regular and close contact with their representatives on City Council. Therefore we have community-wide support, as well as, involvement with many projects and initiatives we undertake to continue progress within our great City.

Within the enclosed application, you will learn more about the areas of governance and self-determination where we believe added responsibilities at our City government level can produce positive changes in our efforts to improve the quality of life in West Virginia. We are confident as you consider granting us the ability to move forward, we will do so with a commitment to open government and open discussions about each and every issue included within the application before any changes would be adopted.

Thank you again for your role in making government more effective and responsive. If I can provide any additional information about our application or the City's plans to use this opportunity for positive results, please do not hesitate to contact me or our City Manager.

Sincerely,


Catherine Goings, Mayor



CITY OF CLARKSBURG

WEST VIRGINIA

OFFICE OF
CITY MANAGER

March 19, 2014

West Virginia Home Rule Pilot Program
West Virginia Department of Commerce
State Capital Complex
Building 6, Room 525
Charleston, West Virginia 25303

Re: Home Rule Application

Dear Members of the Home Rule Pilot Program Committee:

On behalf of my office and the elected officials of Clarksburg, West Virginia, I extend our appreciation for your consideration and vital deliberation of our Home Rule Pilot Program Application. Our municipality is a united and motivated group who welcome the positive difference the Home Rule Program will provide. I am certain this will have a constructive impact on the governing relationship we have with our residents.

The City of Clarksburg further details the added responsibilities we request in the enclosed narrative and application. We have discussed and deliberated to the fullest extent to which we feel these changes will make to our governing practices. Our residents have had the opportunity to review what the City of Clarksburg proposes in addition to discussing these changes with various members of City Council and myself. We are proud to present our application in the hopes of ultimately having the ability to improve the quality of life for the Clarksburg residents.

If you have any questions or if I can be of any further assistance please do not hesitate to contact my office. I can be reached Monday through Friday from 8am to 4:30pm at (304) 624-1677 or by email at mhowe@cityofclarksburgwv.com.

Sincerely,

Martin Howe
City Manager

CC: Honorable Mayor and Council Members

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MUNICIPAL HOME
RULE PILOT PROGRAM
PHASE II

Senate Bill 317 / March 2014

APPLICATION

**West Virginia Municipal Home Rule Pilot Program Application
Phase II**

PLEASE TYPE OR PRINT- Application Due before 6-1-2014

SECTION I: APPLICANT INFORMATION

A. General Information

Name of Municipality: City of Clarksburg

Certifying Official: Martin Howe Title: City Manager

Contact Person: Martin Howe Title: City Manager

Address: 222 West Main Street

City, State, Zip: Clarksburg WV 26301

Telephone Number: 304/624.1677 Fax Number: 304/624.1662

E-Mail Address: mhowe@cityofclarksburgwv.com

2010 Census Population: 16,000 +

B. Municipal Classification

Please identify municipal class: (Check one)

Class I Class II Class III Class IV

C. Category of Issues to be Addressed

Please identify areas to be addressed through home rule: (Check all that apply)

Taxing Organization Administrative Personnel

(Please describe-attach additional pages for each category):

Please see a summary description of each category on the following page.

1. Collecting Clean-up Cost from Farmers' Mutual Insurance Companies
Permit the City to recover property clean-up cost from Farmers' Mutual Insurance companies.
2. Collection of Demolition Liens
 - a. Ensure that the City's demolition liens are paid during the county tax sale.
 - b. Permit the City to recover demolition liens before a purchaser can secure a deed to a property purchased at the county tax sale.
3. Relief from Party Affiliation Requirement for Municipal Non-Partisan Election and Board Commissioners
 - a. Permit the City to remove the restriction that mandates opposite political party affiliation of election officials during City Council elections.
 - b. Permit the City to remove the party affiliation requirement for Firemen's Civil Service Commissioners.
 - c. Permit the City to remove the party affiliation requirement for Policemen's Civil Service Commissioners.
 - d. Permit the City to remove the party affiliation requirement for Municipal Building Commission.
4. Procurement of architect-engineering services
Modify procedure for procurement of architect-engineering services for projects over \$250,000 to allow for Request for Proposal (RFP) Process.
5. Building and Zoning Administration Enforcement Provisions
Permit zoning and building administrators and/or City law enforcement officers to issue "on the spot" citations for exterior sanitation/ common nuisance violations.
6. Appropriate Adequate Funding for Advertising the City
Permit the City to appropriate adequate funds to advertise the City and promote City events.
7. Impose a one percent (1%) Sales and Use Tax
Permit the City to implement a one percent (1%) Sales and Use Tax while reducing Business and Occupation Tax within manufacturing and retail sales classifications.

CITY OF CLARKSBURG MUNICIPAL HOME RULE PLAN

EXECUTIVE SUMMARY

The City of Clarksburg (the City) is tucked away in the hills of North-Central West Virginia. Clarksburg is the County Seat of Harrison County. Clarksburg is located at the intersection of two (2) heavily traveled highways and the second busiest interchanges in the state; Interstate 79 and U.S. Route 50. Clarksburg enjoys the amenities of the largest city in the region with the advantages of a small hometown community. Clarksburg residents enjoy a rich mixture of retail, industrial, and government services, along with a thriving business community, with an abundance of recreational facilities. Clarksburg also has one of the best preserved historic downtowns in the state.

The population of the City of Clarksburg has been steady in the last decade. We aim to increase the population of our City and provide greatly needed municipal services to the residents of Clarksburg. However, the City faces numerous challenges in managing its² budget and delivering services mandated by state law. The City is often restricted by state laws that prevent the City from carrying out duties and responsibilities to its residents in a cost-effective, efficient, and timely manner. The following proposed Municipal Home Rule Plan outlines solutions to enhance and improve the ability of the City to meet its present and future obligations. Approval of this plan will ensure that the City can continue improving the services and quality of life provided to its residents.

NARRATIVE

THE PLAN Pursuant to W. Va. Code §5a, Article 1, Chapter 8, the City hereby proposes the following Municipal Home Rule Plan:

1. Collecting Clean-up Costs from Farmers' Mutual Insurance Companies

Proposed Solution Area(s): Administrative

Specific state laws, policy rule or regulations in question: West Virginia Code § 33-22-1

Current state law, W. Va. Code § 33-17-9b, provides that in the event an insurance company receives, within six (6) months of the date of loss, certification that such clean-up, removal or disposal costs have been incurred by a municipality, rather than the policyholder, such debris removal and clean-up proceeds shall be paid to the municipality, which has incurred such costs: Provided, that any company that has issued a policy that provides coverage for damage to real property as a result of fire or explosion, regardless of whether such policy includes coverage for debris removal, shall comply with the provisions of §38-10E-1. Further, § 38-10E-1 provides that the receipt by an insurance company of a claim under a fire insurance policy for a total loss to real property creates a statutory lien on the insurance proceeds payable for such claim in favor of the municipality in which the property is situate... in an amount equal to the greater of: (A) \$5,000; or (B) ten percent of the policy limits for loss to the real property, including any coverage for debris removal: Provided, that the amount of the lien may not exceed the policy limits of coverage for the real property plus debris removal, if any: Provided, however, That the lien created by this subsection does not apply to proceeds payable under the policy for any losses other than those to the real property insured, including loss of personal property and payments for temporary housing and related living expenses. If the insured has a fire insurance policy, the insurance company is obligated to notify the municipality according to §38-10E-1. Further, the insurance proceeds payable on such claim should be paid to the municipality, so long as the municipality files a notice to create a lien within thirty (30) days of the receipt of a letter from the insurance company.

Specific Problem

If the fire insurance policy is provided by a company organized as a Farmers' Mutual Insurance company, W. Va. Code § 33-17-9b and § 38-10E-1 may not apply to such insurance company. W. Va. Code § 33-22-1 states that no law hereafter enacted shall apply to any Farmers' Mutual fire Insurance company unless such law shall declare that it is specifically applicable to Farmers' Mutual fire Insurance companies. As a result of W.Va. Code § 33-22-1, insurance companies that are organized as Farmers Mutual Fire Insurance companies are exempt from W.Va. Code §33-17-9b and §38-10E-1.

Proposed Solution

It is proposed that the City be given power and authority to apply the provisions of W.Va. Code §33-17-9b and §38-10E-1 to insurance companies organized as Farmers' Mutual Insurance. Thereby excluding the City from the provisions of W. Va. Code 33-22-1 which excludes fire mutual insurance companies from adhering to W. Va. Code §33-17-9b and §38-10E-1.

The City expends tax payers' money in the clean-up of structures damaged by fire. W.Va. Code § 38-10E-1 allows the City to create a statutory lien on the insurance proceeds payable for such claim in favor of the City. It is the goal of the City to clean-up dilapidated and damaged structures in a timely manner. The City has been unable to recoup its clean-up cost from insurance companies organized as Farmer's Mutual Insurance companies under the state code. This proposal will ensure that the City can continue its cleanup efforts and recover its clean-up cost in a timely manner.

2. Collection of Demolition Liens at County Tax Sale.

Proposed Solution Area(s): Administrative

Specific state laws, policy rule or regulation in question: West Virginia Code § 11A-3-14, and § 11A-3-52

Current state laws for sale of property with delinquent taxes restrict the City from collection of demolition liens. The City is experiencing a vast increase in the amount of blighted properties within the City limits. Many of these structures are dilapidated and uninhabitable. The presence of these blighted properties creates a negative impact on communities within the City. The City receives numerous complaints from residents about dilapidated houses in their neighborhood. Many of these dilapidated houses create imminent danger to City residents.

In addition, these blighted structures are generating no taxes, providing no jobs, depressing the value of surrounding properties, discouraging new investments, and creating an economic drain on the City. The presence of these dilapidated houses discourages potential home buyers from moving into the City, and encourages current homeowners to move out of the City. Moreover, the presence of the dilapidated buildings across the City hampers the City's economic development efforts. The City's demolition program is aimed at improving the real property and the value of surrounding properties. The City is currently expanding by creating opportunities that attract new businesses and residents to the City. Economic growth is paramount to the goal of the City, and the City's demolition program is geared towards achieving better economic growth.

The City uses several criteria to condemn properties to be demolished. If property presents imminent danger of structural failure or the cost of repair exceeds the fair market value of the property, and it is unfeasible to repair the property, it is subject to demolition. The City's demolition program has been a model for other Cities in the state. The City continues to pursue an aggressive demolition program to revive our neighborhoods. The City has been demolishing an average of 35 structures a year, including residential, commercial, and fire burnt structures. The City uses funds from the general fund; city capital improvements levy funds; small cities block grant fund; and loans from Huntington/ MVB bank and West Virginia Housing

Development loan funds. The City has taken out over \$2 Million in loans that are repaid using tax payers' money. So far, the City has demolished in excess of three hundred (300) properties.

The City's demolition program is in accordance with state code. Pursuant to W. Va. Code § 8-12-13, the City adopted the state building code as promulgated by W. Va. Code § 29-3-5b as part of the City's Building Code. In accordance to W. Va. Code § 29-3-5b, the City has adopted the International Property Maintenance Code (IPMC). IPMC § 110 states that the code official shall order the owner of any premises upon which is located any structure, which in the code official judgment after review is so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure....or where there has been a cessation of normal construction of any structure for a period of more than two (2) years, the code official shall order the owner to demolish and remove such structure. IPMC §110.3 further provides that if the owner of the premises fails to comply with a demolition order within the time prescribed, the code official shall cause the structure to be demolished and removed, either through an available public agency...and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

In accordance with the IPMC code, the City has taken action to demolish dilapidated structures within the City. These demolitions are conducted after the owners fail to comply with the demolition order within the time prescribed. The demolition cost incurred by the City is charged against the real estate upon which the structure is located and shall be a lien upon such real estate. Most of these demolished properties end up at the county tax sale because the homeowners are delinquent on their property taxes. These properties, without being improved, would conceivably go unredeemed or not purchased at the county tax sale. At such, the purchasers benefit from the use of public funds to improve the property, and the City does not recover the demolition cost. Due to the minimal collection rate of the demolition cost from homeowners, the City constantly files demolition liens on the real estate upon which the property is located. However, the City has not been able to collect on most of our demolition liens due to the county tax sale process, because the demolition liens are legally subordinate to the lien for property taxes. Precisely, the City has collected less than 19% of its demolition liens. As of

March, 2013, the City has spent over \$3.8 Million to demolish 350 structures. The City has only collected \$712,000. The City's collection efforts have been severely hampered by the county tax sale process.

a. Payment of Demolition Lien Before Securing a Certificate of Sale

Specific Problem

Presently, the City is limited by W. Va. Code § 11A-3-14 and other laws related to the purchase of property by tax sale. W. Va. Code § 11A-3-14 (a) provides that if the highest bidder present at the sale provided in section five of this article, bids and pays at least the amount of taxes, interest and charges for which the tax lien on any real estate is offered for sale, the sheriff shall issue to him or her a certificate of sale for the purchase money.... except the sheriff shall require payment of any subsequent taxes due at the time of the sale before a Certificate of Sale is issued. The Sheriff is required to issue a Certificate of Sale to the highest bidder who pays at least the amount of taxes, interest and charges for which the tax lien on the real estate is offered for sale. This washes away the demolition lien on the property because the purchaser is not required to satisfy the demolition lien. At such, the purchaser wrongfully benefits from the use of public funds to demolish and clean up these dilapidated properties. This practice has led to the City losing millions of dollars of tax payers' monies.

Proposed Solution

The statute provides that the sheriff can refuse to issue a Certificate of Sale if there are subsequent year's taxes due at the time of the sale. In accordance with W. Va. Code § 11A-3-14, the City proposes that its' demolition liens be collected at the tax sale auction in addition to the delinquent property taxes. The sheriff shall require payment of any demolition liens due at the time of the sale before the Certificate of Sale is issued. At such, the highest bidder present at the sale must bid and pay the amount of taxes, interest and charges for which the tax lien on any real estate is offered for sale, in addition to paying the City's demolition lien before the sheriff can issue a Certificate of Sale for the purchase money.

b. Payment of Demolition Lien before Securing a Deed.

Specific Problem

Current state law requires that a purchaser of real property at the tax sale auction must meet certain criteria after a specified time period before the purchaser can secure the deed to the property. The time period is specified in W. Va. Code § 11A-3-5 and § 11A-3-19. W. Va. Code § 11A-3-5 states that the tax lien on each unredeemed tract or lot, or each unredeemed part thereof or undivided interest therein shall be sold by the sheriff..... on any working day after the fourteenth day of October and before the twenty-third day of November. W. Va. Code § 11A-3-19 states that at any time after October 31 of the year following the sheriff's sale, and on or before December 31 of the same year, the purchaser can apply for the deed to the purchased real estate after meeting certain criteria. The purchaser at a sheriff's tax sale can secure a deed after the 1st of March of the following year pursuant to W. Va. Code § 11A-3-27. Put together, the waiting period for the purchaser to secure a deed is about 18 months. During this 18 month period, the purchaser also has a right to redeem the property. Property on which there is no sufficient bid for taxes, interest and charges due, are certified to the auditor pursuant to W. Va. Code § 11-3-8 and are subject to sale by the deputy commissioner of delinquent and nonentered lands under W. Va. Code § 11A-3-42.

Proposed Solution

W. Va. Code § 11A-3-27 (Sheriff's Sale) and W. Va. Code § 11A-3-52 (deputy commissioner of delinquent and nonentered lands) respectively state the requirements for what purchasers must do before securing a deed after the 18 month redemption period, for either a tax deed from the Sheriff's sale or a deed from the Deputy Commissioner's sale for property "sold to the State." For example, according to W.Va. Code § 11A-3-52 (a), within forty-five days following the approval of the sale by the deputy commissioner, pursuant to section fifty-one of this article, the purchaser, his heirs or assigns, in order to secure a deed for the real estate purchased, shall meet certain requirements including the deposit, or offer to deposit, with the deputy commissioner a sum sufficient to cover the costs of preparing and serving notices. The City proposes that it be permitted to include a provision that requires the satisfaction of City demolition liens before the purchaser can secure this deed from the Deputy Commissioner or in the event that the purchaser(s) is

unwilling to satisfy the demolition lien, the purchaser shall lose all of the benefits of the purchase. A similar provision would be included as a prerequisite to delivery of a deed from the Sheriff.

The proposal will ensure that the City can recover tax payers' monies and public funds used in the demolition of blighted properties within the City. Recovering the cost of demolition is paramount to the future of the demolition program. The City must be able to recoup most of its demolition costs in order to continue and expand the program. This proposal will vastly increase the City's collection rate on demolition liens, and it will enable the City to expand the program.

3. **Relief from Party Affiliation Requirement for Municipal Non-Partisan Election, Civil Service Commissions and Municipal Building Commission**

Proposed Solution Area(s): Organization

Specific state laws, policy rule or regulation in question: West Virginia Code § 3-1-29(4), § 8-15-12, and §8-14-7.

Specific Problem

Current state law provides that no team of municipal election officials shall consist of two (2) persons with the same registered political party. State law also mandates that not more than two (2) policemen's or firemen's civil service commissioners shall be adherents of the same political party. As a predominant Democratic county/city, it is difficult to meet this requirement. Harrison County and the City of Clarksburg are predominantly Democratic.

Proposed Solutions

The City proposes the following:

a. **Relief from Party Affiliation Requirement for Municipal Non-Partisan Election**

Per State law, election officials must be of differing/opposing party affiliations regardless if the election is non-partisan. W. Va. Code § 3-1-29 (4) explains the requirements of being a poll worker. The term "team of poll clerks" or "team of election commissioners" means two (2) persons appointed by opposite political parties to perform the specific functions of the office: *Provided*, that no team of poll clerks or team of election commissioners may consist of two (2) persons with the same registered political party affiliation or two (2) persons registered with no political party affiliation.

The City proposes to be exempted from the requirements of W. Va. Code § 3-1-29 (4). A change to this law as it pertains to non-partisan elections would make it less difficult to obtain workers to serve as election officials. Furthermore, neither the election officials, nor the voters, are apprised as to the party affiliation of the candidates on the respective ballot. This requirement is unduly burdensome for municipalities that conduct non-partisan elections.

b. Relief from Party Affiliation Requirement for Firemen's Civil Service Commissioners

Per state law, not more than two (2) of the three (3) firemen's civil service commissioners shall be of the same political party. W. Va. Code § 8-15-12 states that not more than two (2) of the said commissioners, at any one time, shall be adherents of the same political party. The City proposes to be exempt from the requirements of W. Va. Code § 8-15-12. A change to this law will ensure that the best qualified individuals are appointed as commissioner.

c. Relief from Party Affiliation Requirement for Policemen's Civil Service Commissioners

Current state law for policemen's civil service commission states that not more than two (2) of the three (3) policemen's civil service commissioners shall be of the same political party. W. Va. Code § 8-14-7 states that not more than two (2) of the said commissioners at any one time, shall be adherents of the same political party. The City proposes to be exempt from the requirements of W. Va. Code § 8-14-7. This proposal will ensure that the best qualified individuals are appointed as commissioner.

d. Relief from Party Affiliation Requirement for Municipal Building Commission

Per state law, no more than two thirds of the total number of members of the board of said commission shall be from the same political party. The City proposes to be exempt from the requirements of W.Va. Code § 8-33-3. Again, as a predominant democratic county/city it is difficult to meet this requirement. Further, this proposal will ensure that the best qualified individuals are appointed as commissioner.

4. Procurement of Architect-Engineering Services.

Proposed Solution Area(s): Administrative

Specific state laws, policy rule or regulation in question: West Virginia Code § 5G-1-3

Specific Problem

Present state law regarding the City's procurement of design contractors requires the selection process be conducted in two (2) parts: (1) a committee must select the top three (3) most highly qualified firms and (2) negotiate price for the contract. W.Va. Code § 5G-1-3. If negotiations with the most qualified firm do not result in a satisfactory contract, then the committee moves to the second most qualified firm and negotiations begin again with the new firm.

Proposed Solution

In order to streamline the process and allow the City to select the "best value" for all projects, the City, under Home Rule, proposes to instead follow a selection process similar to federal Housing and Urban Development regulations under 24 CFR 85.36(d)(3).

Under 24 CFR 85.36(d) (3), procurement by competitive proposals, the technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply: (i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical; (ii) Proposals will be solicited from an adequate number of qualified sources; (iii) Grantees and sub grantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees; (iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and (v) Grantees and sub grantees may use competitive proposal procedures for qualifications-based procurement of Architectural/Engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

Modeled after the City of Charleston's Home Rule Architect/Engineering Services provision, this selection process would permit the City to issue a Request for Proposal and then select the proposal that provides the best value by taking into consideration the price, qualifications and all other factors material to the project.

5. Building and Zoning Administration Enforcement Provisions

Proposed Solution Area(s): Administrative

Specific state laws, policy rule or regulation in question: West Virginia Code § 8-12-16

Specific Problem

Presently, there is no clear authority under state law that would permit building and zoning administrators or City law enforcement officers to issue “on the spot” citations for external sanitation violations or common nuisances. Additionally, W.Va. Code § 8-12-16 mandates certain procedural and notice requirements including a requirement that, “[a]ll orders issued by the enforcement agency shall be served in accordance with the law of this state concerning the service of process in civil actions” and a requirement that such orders “be posted in a conspicuous place on the premises affected by the complaint or order . . .” Further, W.Va. Code § 8-12-16(d) currently mandates that “no ordinance shall be adopted without providing therein for the right to apply to the circuit court for a temporary injunction restraining the enforcement agency pending final disposition of the cause.” Currently, building and zoning administrators issue citations only after application to and approval by the Municipal Court. The process of successfully prosecuting a building or zoning violation may take a month or more, and fosters recidivism from violators who will correct violations to get a case dismissed, then re-offend, knowing the prosecution clock will start anew.

Proposed Solution

Modeled after the City of Charleston’s Home Rule Building and Zoning Enforcement provision, the City proposes that building and zoning administrators and/or City law enforcement officers be given power to issue citations for reoccurring exterior sanitation/common nuisance violations (including, but not limited to, trash/rubbish, overgrown weeds/grass, junked or otherwise unlawfully situated motor vehicles, maintenance of vacant structures, broken windows or glass, failure to maintain sidewalks and driveways) at the site of the violation and at the time the violation is recognized, similar to the manner in which traffic citations are issued.

6. Appropriate Adequate Funding for Advertising the City

Proposed Solution Area(s): Administrative

Specific state laws, policy rule or regulation in question: West Virginia Code § 8-12-5 (52)

Specific Problem

Present state law restricts the City from providing adequate funds to advertise and promote the City. W. Va. Code § 8-12-5 (52) provides that a municipality has the power to appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors. This law restricts the City from providing adequate funding to events that promote the City. The City proposes to be allowed to waive the provisions of W. Va. Code § 8-12-5 (52).

Proposed Solution

The City proposes to appropriate and expend not exceeding one dollar per capita per annum for advertising the municipality and the entertainment of visitors. This proposal will enable the City to adequately promote its image and improve awareness for City events. The City has a rich history of organizing historical and cultural events that brings thousands of people into the City. Businesses in the City benefit from these events as a means of raising revenue. City residents also benefit from these events because it enhances community involvement and participation. These events maximize the quality of life of our residents by promoting arts, entertainment, and cultural values. The City also benefits from increased revenue by receiving more taxes from businesses, and charging for parking fees. This proposal is paramount to the City's goal of increasing awareness of our cultural events and ultimately promoting the City.

7. Impose a Sales and Use Tax

Proposed Solution Area(s): Taxing

Specific state laws, policy rule or regulation in question: West Virginia Code §8-13-1 and §8-13C-1.

The City of Clarksburg needs to generate additional revenues to (1) provide revenues to pay the long term unfunded liabilities for the City's Police and Fire Pension funds, (2) provide funds for infrastructure improvements in the City and for needed capital expenditures, and (3) provide funds for economic development activities and projects.

Specific Problem

West Virginia law currently limits types of taxes a municipality may impose and the rates at which those taxes may be imposed. More specifically, the taxes a municipality may impose are limited to those specified in W. Va. Code 8-13-1 et seq. and W. Va. Code 8-13C-1 et seq. The primary business tax imposed by the City is the business and occupation tax, which is similar to the State business and occupation tax in effect prior to July 1, 1987. State law specifies the classifications of business activities upon which the City may impose its business and occupation tax and specifies the maximum rates that may be levied which, except in a couple of instances, are the primary State tax rate for those classifications in effect on January 1, 1959. Not all business activities were subject to the State business and occupation tax. Consequently, not all business activities engaged in within the City are subject to the City's business and occupation tax.

The State effectively repealed its business and occupation taxes on most business classifications effective July 1, 1987, in response to the 1984 final report of the West Virginia Tax Study Commission entitled "A tax study for West Virginia in the 1980's: equity for taxpayers, efficiency in administration, incentives for development: final report to the West Virginia Legislature." That report recommended that the Legislature replace both State and municipal business and occupation taxes. As previously mentioned, although the Legislature effectively repealed the State business and occupation tax for most businesses effective July 1, 1987, the Legislature has provided municipalities with no suitable alternative taxes.

In 2004, the Legislature enacted W. Va. Code 8-13C1- et seq., which allows municipalities to impose a one percent (1%) sales and use tax provided they repeal their business and occupation tax. In most instances, and specifically in the case of the City of Clarksburg, the amount of business and occupation taxes received under the service business classification of the tax, far outweigh the revenue that would be generated from one percent (1%) sales and use taxes. Consequently, under current law, the City of Clarksburg cannot afford to utilize the only tax alternative currently available to the City. The primary reason for repealing the State business and occupation tax is also the reason why alternative revenue sources need to be found for municipal business and occupation taxes – the taxes are a disincentive to economic growth and creation of jobs within the City. For example, the taxes are measured by gross receipts from business activity, whether or not the business makes a profit. Additionally, the business and occupation tax encourages business growth and expansion outside of City limits and is a detriment of the City's economic base.

The attached **Exhibit 1 and Exhibit 2** demonstrate the extreme inadequacies of the current funding methods used by the City to fund its Police and Fire Pension Plans. Using the current, Alternative Funding Method, in FY15 the City will contribute \$1,727,240 (10.7%) of its entire General Fund budget to the two pension plans. These contributions must increase by at least seven percent (7%) annually. In addition, the plans are both underfunded as reported in the Actuarial Valuation Report of the Clarksburg Policemen's Pension and Relief Fund dated July 1, 2012, and the Actuarial Valuation Report of the Clarksburg Firemen's Pension and Relief Fund dated July 1, 2012 completed by actuary Gabriel Roeder Smith & Company. Funding levels are reported at 12.83% and 13.86% respectively. The City will experience a strain on its future operating budgets in meeting current funding levels and a new funding source is needed to satisfy future long term funding requirements.

Exhibit 3 shows the City's current business and occupation tax rates and the maximum municipal rates allowed under state statute. The City's rate for its business and occupation tax classifications are set at the maximum allowable rate under state statute therefore the City is without authority to raise rates to collect additional revenues.

Proposed Solution

The City of Clarksburg proposes to and seeks approval to impose one percent (1%) sales and use tax which will, among other purposes:

1. Generate new revenue to contribute additional funds to reduce its unfunded liabilities under its self-funded policemen's and firemen's pension plans.
2. Provide funds for needed infrastructure improvements and capital expenditures.
3. Provide funds to assist with economic projects and programs while allowing/or the opportunity for tax incentives to businesses which will help grow the City's tax base and create jobs.

With imposition of the sales tax, the City will reduce the rates of business and occupation tax levied on its retail sales tax classification and on its manufacturing tax classification.

As required by West Virginia Code 8-1-5a (k) (6), in conjunction with the City's request for authority to impose a one percent (1%) sales and use taxes, the City is proposing to reduce the rate of its business and occupation tax under the retail sales classification from .50% to .40%, which will result in a reduction of revenues of approximately \$630,000 per year. Additionally, the City is proposing to reduce the business and occupation tax under the manufacturing tax classification from .30% to .15%, which will result in a further reduction of revenues of approximately \$160,000 per year. The total projected reduction in business and occupation tax revenue is estimated at \$790,000 annually, as illustrated in **Exhibit 4- B&O Tax Collections Report and Exhibit 5 – Projection of Annual Revenues - 1% Sales Tax, Coordination of B&O Tax Reduction and Sales and Use Tax Receipts**; estimated annual revenues to be generated from a one percent (1%) sales tax is \$3,040,000. This increase will be offset by an annual reduction of \$790,000 in business and occupation tax. These also show the actual collections of taxes under each tax classification for the five (5) year period 2009 through 2013 and the average annual revenue generated for each classification.

The City's sales and use taxes will be administrated, collected, and enforced by the State Tax Department. With limited exceptions, the State and City sales tax base will be identical. Therefore, a transaction exempt from State sales tax will also be exempt from City sales tax.

Exhibit 5 shows that the Committee Substitute for Senate Bill 435 (2013) requires that the municipality reduce its business and occupation tax in order to impose a sales tax. Because, the municipality's B&O tax is deposited in its general revenue fund and the municipality is required to have a balanced budget, the municipality must carefully coordinate the timing of B&O tax reductions and their effect on B&O tax collections and when the municipality will begin to receive sales use tax revenues from the State.

The current financial resources available to the City of Clarksburg, West Virginia, are not adequate to fund anticipated long term needs to the City. The City has few options available to it to meet revenue needs and the City has determined that the better option available is to impose a sales and service tax and implementing use taxes at the one percent (1%) rate and reducing business & occupation tax on its retail and manufacturing tax classifications.

City of Clarksburg Policemen's Pension and Relief Fund
Actuarial Study as of July 1, 2012

Summary of Key Valuation Results

Schedule A

Valuation Date	July 1, 2011	July 1, 2012
Valuation Interest Rate	5.00%	5.00%
Cost-of-Living Adjustment	3.00%	3.00%
Salary Increase	5.00%	5.00%
Covered Payroll	\$1,945,720	\$2,017,329
Average Pay	\$42,298	\$43,855
Expected Benefit Payments	\$970,946	\$1,011,666
1 Actuarial Accrued Liability	<u>No.</u>	<u>No.</u>
(a) Actives	46 \$8,767,923	46 \$9,302,642
(b) Retirees	20 \$8,803,311	19 \$9,035,334
(c) Surviving Spouses	12 \$1,747,573	13 \$1,979,201
(d) Disabled Members	12 \$2,811,475	12 \$3,222,192
(e) Deferred Vested Members	3 \$1,358,061	3 \$1,427,140
(f) Total	93 \$23,488,343	93 \$24,966,509
2 Present Value of Future Normal Costs	\$8,242,784	\$8,199,692
3 Present Value of Benefits (1 + 2)	\$31,731,127	\$33,166,201
4 Market Value of Assets	\$3,136,739	\$3,459,949
5 Unfunded Actuarial Accrued Liability (1(f) - 4)	\$20,351,604	\$21,506,560
6 Funded Ratio (4 / 1(f))	13.35%	13.86%
7 Net Employer Normal Cost		
(a) Gross Normal Cost ^a	\$792,767	\$796,101
(b) Employee Contribution Rate ^b	7.07%	7.42%
(c) Expected Employee Contributions	\$137,554	\$149,588
(d) Net Employer Normal Cost (a - c)	\$655,213	\$646,513
(% of Compensation)	33.67%	32.05%
	<u>FYE 2013</u>	<u>FYE 2014</u>
8 Estimated Minimum Employer Contribution ^c		
(a) Prior Year Alternative Contribution	\$670,414	\$717,343
(b) Increase in Alternative Contribution	7.00%	7.00%
(c) Current Year Alternative Contribution	\$717,343	\$767,557
(d) Additional Contribution	\$0	\$0
(e) Alternative Contribution (c + d)	\$717,343	\$767,557

^a Gross normal cost for plan year end June 30, 2013, includes administrative expenses of \$9,566

^b Blended rate reflecting 7.0% for members hired before January 1, 2010, and 9.5% for members hired after January 1, 2010.

^c The City of Clarksburg made an additional contribution of \$0 in excess of the minimum alternative contribution for FYE 2013. Estimated Minimum Employer Contribution is based on Alternative funding policy and is assumed to be made in plan year 2013.

City of Clarksburg Firemen's Pension and Relief Fund
Actuarial Study as of July 1, 2012

Summary of Key Valuation Results

Schedule A

Valuation Date		July 1, 2011		July 1, 2012
Valuation Interest Rate		5.00%		5.00%
Cost-of-Living Adjustment		3.00%		3.00%
Salary Increase		5.00%		5.00%
Covered Payroll		\$1,678,365		\$1,712,139
Average Pay		\$39,961		\$41,759
Expected Benefit Payments		\$1,257,100		\$1,310,895
1. Actuarial Accrued Liability				
		<u>No.</u>		<u>No.</u>
(a) Actives	42	\$9,567,472	41	\$10,173,481
(b) Retirees	33	\$13,403,286	34	\$13,948,132
(c) Surviving Spouses	15	\$2,289,839	15	\$2,275,906
(d) Disabled Members	11	\$2,354,921	11	\$2,691,481
(e) Deferred Vested Members	0	\$0	0	\$0
(f) Total	101	\$27,615,518	101	\$29,089,000
2. Present Value of Future Normal Costs		\$6,484,169		\$6,313,217
3. Present Value of Benefits (1 + 2)		\$34,099,687		\$35,402,217
4. Market Value of Assets		\$3,639,130		\$3,733,393
5. Unfunded Actuarial Accrued Liability (1(f) - 4)		\$23,976,388		\$25,355,607
6. Funded Ratio (4 / 1(f))		13.18%		12.83%
7. Net Employer Normal Cost				
(a) Gross Normal Cost ^a		\$695,778		\$700,124
(b) Employee Contribution Rate ^b		7.14%		7.21%
(c) Expected Employee Contributions		\$119,889		\$123,510
(d) Net Employer Normal Cost (a - c)		\$575,889		\$576,614
(% of Compensation)		34.31%		33.68%
		<u>FYE 2013</u>		<u>FYE 2014</u>
8. Estimated Minimum Employer Contribution ^c				
(a) Prior Year Alternative Contribution		\$676,803		\$724,179
(b) Increase in Alternative Contribution		7.00%		7.00%
(c) Current Year Alternative Contribution		\$724,179		\$774,872
(d) Additional Contribution		\$0		\$0
(e) Alternative Contribution (c + d)		\$724,179		\$774,872

^a Gross normal cost for plan year end June 30, 2013, includes administrative expenses of \$9,101.

^b Blended rate reflecting 7.0% for members hired before January 1, 2010, and 9.5% for members hired after January 1, 2010

^c The City of Clarksburg made an additional contribution of \$0 in excess of the minimum alternative contribution for FYE 2013. Estimated Minimum Employer Contribution is based on Alternative funding policy and is assumed to be made in plan

Current City of Clarksburg Business & Occupation Tax Rates

	City's Current Rate Per <u>\$100 of Sales</u>	Maximum Tax Rate Allowed <u>State Statute</u>
Contracting	2.00	2.00
Service - All Other Business	1.00	1.00
Public Utilities	3.0 to 4.0	3.0 to 4.0
Retailers	0.50	0.50
Rents	1.00	1.00
Banking	1.00	1.00
Wholesalers	.15	.15
Manufacturing	0.30	0.30
Amusement	0.50	0.50

Total

B&O COLLECTION SUMMARY REPORT
 ACTUAL B&O COLLECTIONS 5 YEARS - JANUARY 1, 2008 THRU DECEMBER 31, 2013

Description	1/1/2009	1/1/2010	1/1/2011	1/1/2012	1/1/2013	Total Collections 5 Years	Average Annual Collections
	thru 12/31/2009	thru 12/31/2010	thru 12/31/2011	thru 12/31/2012	thru 12/31/2013		
Manufacturing	\$ 291,942	\$ 270,073	\$ 332,781	\$ 329,660	\$ 364,705	\$1,589,160	\$317,832
Retailers	\$ 2,599,927	\$ 1,660,052	\$ 2,705,879	\$ 2,778,915	\$ 2,856,074	\$12,600,847	\$2,520,169
Wholesalers	\$ 140,079	\$ 125,772	\$ 135,848	\$ 136,758	\$ 129,392	\$667,848	\$133,570
Electric Light & Power Companies	\$ 582,803	\$ 706,027	\$ 754,790	\$ 737,618	\$ 710,237	\$3,491,475	\$698,295
Natural Gas Companies	\$ 408,377	\$ 252,303	\$ 251,021	\$ 248,350	\$ 272,994	\$1,433,045	\$286,609
Contracting Business	\$ 553,731	\$ 1,523,460	\$ 2,288,932	\$ 2,465,577	\$ 2,875,865	\$9,707,565	\$1,941,513
Amusement Business	\$ 2,085	\$ 2,035	\$ 2,672	\$ 2,551	\$ 2,687	\$12,030	\$2,406
Furnishing Property for Hire - Rentals	\$ 349,167	\$ 326,828	\$ 357,473	\$ 374,393	\$ 375,280	\$1,783,140	\$356,628
Services and all Other Business	\$ 2,297,421	\$ 2,577,467	\$ 2,254,787	\$ 2,084,810	\$ 1,983,057	\$11,197,542	\$2,239,508
Banking and Other Financial Institutions	\$ 372,714	\$ 389,971	\$ 319,282	\$ 240,631	\$ 215,411	\$1,538,009	\$307,602
Interest & Penalty	\$ 12,762	\$ 26,195	\$ 23,064	\$ 11,027	\$ 6,477	\$79,525	\$15,905
TOTAL	\$ 7,611,007	\$ 7,860,182	\$ 9,426,529	\$ 9,410,290	\$ 9,792,179	\$ 44,100,186	\$8,820,037

**Projection Of Annual Revenues
1% Sales Tax**

Average Total Retail Sales Taxes Collected - 5 Years 2013 \$2,520,169 divided by .50 =	\$ 504,033,800.00
Revenue - 1% Sales Tax Before Reductions For Exempt S	\$ 5,040,338.00
<u>Adjustment/Estimate</u> Deduct Gross Sales Groceries - Fuel - Vehicle Sales - Tax Exempt	\$(2,000,000.00)
Estimated Annual 1% Sales Tax Revenues	\$ 3,040,338.00

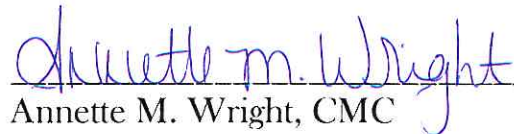
The estimate does not include estimated revenues from sales tax to be collected on services which are subject to the sales tax under state statute.

Hearing Mandate Verification

I, the undersigned City Clerk of Clarksburg, do hereby certify that on the 17th day of April, 2014, at 6:00 p.m., a public hearing was held during a special meeting of the City Council of Clarksburg. The subject of said hearing being Article 112 authorizing the submission of the proposed Municipal Home Rule Plan consistent with W.Va. Code § 8-1-5a.

The attached are true, correct and complete copies of page one of the Clarksburg City Council Agenda evidencing the Public Hearing and the signatures of citizens who spoke either in favor of, or against Article 112.

Witness the signature of the undersigned City Clerk of the City of Clarksburg, West Virginia, and the seal of this City, this 16th day of May, 2014.



Annette M. Wright, CMC
City Clerk
Clarksburg, West Virginia

PUBLISHER'S CERTIFICATE

I, Deborah S. Veltin
Advertising Manager of THE EXPONENT
TELEGRAM, a newspaper of general circulation
published in the city of Clarksburg, County and state
aforesaid, do hereby certify that the annexed:

PUBLIC HEARING NOTICE CITY OF CLARKSBURG, WEST VIRGINIA

HOME RULE PROGRAM

Notice is hereby given by the City of Clarksburg, WV, that it will hold a public hearing on Thursday, April 17, 2014 at 6:00 p.m. at the Clarksburg Municipal Building Council Chambers (2nd Floor), 222 West Main Street, Clarksburg, WV 26301.

The purpose of this public hearing is to discuss the City of Clarksburg's proposed Home Rule written plan and application. This information will be utilized by the City of Clarksburg in its application to the State for the Home Rule Program.

The City of Clarksburg's proposed Home Rule Program and application is available for public inspection in the Office of the City Clerk, as well as the Office of the City Manager, Clarksburg Municipal Building (2nd Floor), 222 West Main Street, Clarksburg, WV 26301 beginning on March 14, 2014, Monday through Friday, between the hours of 8:00 a.m. and 4:30 p.m. Said proposed Home Rule Program and application can also be found on the City's website at www.cityofclarksburgwv.com.

All interested citizens are invited to attend the public hearing scheduled on Thursday, April 17, 2014 at 6:00 p.m. and to present oral or written comments concerning the City's proposed Home Rule plan and application at that time. Written comments may be addressed to Annette Wright, City Clerk, City of Clarksburg, 222 West Main Street, Clarksburg, WV 26301. The first reading of the ordinance approving the City of Clarksburg's Home Rule plan application will be held at the regularly-scheduled Clarksburg City Council meeting at 7:00 p.m. on Thursday, April 17, 2014 at the Clarksburg Municipal Building Council Chambers (2nd Floor), 222 West Main Street, Clarksburg, WV 26301.

PUBLIC HEARING NOTICE

was published in THE EXPONENT-TELEGRAM 2
time(s) commencing on 03/14/2014 and ending on
03/21/2014 at the request of

CITY OF CLARKSBURG.

Given under my hand this 03/26/14.

The publisher's fee for said publication is: \$75.71.

Deborah S. Veltin

Advertising Manager of The Exponent-Telegram

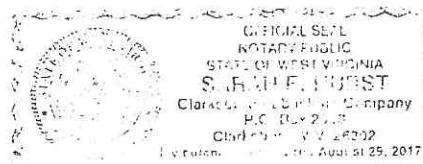
Subscribed to and sworn to before me this 03/26/14

Sarah Hertz

Notary Public in and for Harrison County, WV

My commission expires on

The 29th day of August 20 17



A G E N D A

C I T Y O F C L A R K S B U R G

AGENDA FOR **SPECIAL** MEETING OF COUNCIL OF THE CITY OF CLARKSBURG TO BE HELD **THURSDAY, APRIL 17, 2014** AT THE CLARKSBURG MUNICIPAL BUILDING – COUNCIL CHAMBERS, 222 WEST MAIN STREET, CLARKSBURG, WEST VIRGINIA AT **6:00 P.M.**

ORDER OF BUSINESS

1. ROLL CALL
2. **PUBLIC HEARING ON THE CITY OF CLARKSBURG'S PROPOSED HOME RULE WRITTEN PLAN AND APPLICATION**
3. ADJOURNMENT

PUBLIC HEARING

A BILL authorizing the submission of a proposed City of Clarksburg Municipal Home Rule Plan, attached as an Exhibit hereto, to the Municipal Home Rule Board consistent with W.Va. Code § 8-1-5a, in order to be considered for participation in the West Virginia Home Rule Pilot Program.

In favor of:

	<u>Name</u>	<u>Address</u>
1.	MARTIN SHAFFER	211 N. SIXTH ST
2.	John FAZIO	1308 W. AVE
3.		
4.		
5.		
6.		

Opposed to:

	<u>Name</u>	<u>Address</u>
1.	MARTIN SHAFFER	211 N. SIXTH ST
2.	John FAZIO	1308 W. AVE
3.		
4.		
5.		
6.		

PUBLIC HEARING

A BILL authorizing the submission of a proposed City of Clarksburg Municipal Home Rule Plan, attached as an Exhibit hereto, to the Municipal Home Rule Board consistent with W.Va. Code § 8-1-5a, in order to be considered for participation in the West Virginia Home Rule Pilot Program.

In favor of:

Name

Address

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

Opposed to:

Name

Address

1. Jonathan A. Adler AIA, WV 223 Hale Street
Charleston WV 25301
2. _____
3. _____
4. _____
5. _____
6. _____

APRIL 17, 2014

The Clarksburg City Council met in SPECIAL SESSION on Thursday, April 17, 2014 at 6:00 P.M. at the Clarksburg Municipal Building – Council Chambers, 222 West Main Street, Clarksburg, West Virginia, with Mayor Goings presiding.

COUNCIL MEMBERS PRESENT:

Margaret Bailey
Robert Caplan
Sam Lopez
Jim Malfregeot
Vice Mayor Gary Bowden
Mayor Catherine Goings

ALSO PRESENT:

Martin Howe, City Manager
Greg Morgan, City Attorney
Annette Wright, City Clerk

COUNCIL MEMBER(S) ABSENT:

Patsy Trecoast II

Following roll call, Council proceeded with the following:

PUBLIC HEARING ON THE CITY OF CLARKSBURG'S PROPOSED HOME RULE WRITTEN PLAN AND APPLICATION

With the notices regarding the public hearing concerning the above-captioned Home Rule Plan and Application appearing in *The Exponent-Telegram* on March 14, 2014 and March 21, 2014, Mayor Goings declared the public hearing open with the following individuals appearing therefor:

Martin Shaffer, 211 N. Sixth Street, Clarksburg – stated that he supported Home Rule and that he had tried to convince Council to apply for the Home Rule Program in 2007. Mr. Shaffer opined that the process was not transparent enough as he was unable to get a copy of the Home Rule Application on March 9th when he requested the same due to said application not being complete. Mr. Shaffer stated that the executive summary in said Home Rule Application aims to increase population and that Clarksburg has been losing population to Bridgeport for over 30 years. Mr. Shaffer commented that Clarksburg has done nothing to increase the city limits and inquired as to why something was not put in the Home Rule Application to expand the boundaries.

With regard to the collection of clean-up costs, Mr. Shaffer opined such to be a good thing and that he would like to see swifter action in addressing burned out structures by not placing the same out to bid but rather such be handled by City crews. Regarding the collection of demolition liens, Mr. Shaffer opined that the demolition program was flawed and that the City needs to look at it from the perspective of the property owner. Mr. Shaffer stated that he did not believe the citizens wanted the City to be in debt for demolition costs. Regarding the relief from party affiliation requirements for the Municipal Non-Partisan Election and certain Boards/Commissions, Mr. Shaffer stated that he thought it was wise to have conflicting view points on the boards.

Mr. Shaffer stated that the landlords were concerned about the section entitled “building and zoning administration enforcement provisions.” Being a member of the Landlords Association, Mr. Shaffer remarked that on-site fines/citations should be made against the tenant. Mr. Shaffer suggested that the Code Department work with the Water Board to ascertain tenant information or work with the landlords to obtain tenant information. Also, Mr. Shaffer alleged that the Judge does what the City wants rather than what is just and right. Mr. Shaffer remarked that if the City targets the landlords then the people creating the problems are not being fined.

With regard to the section to impose the one percent (1%) sales and use tax, Mr. Shaffer opined that the news media has not done an adequate job of keeping the citizens informed. Mr. Shaffer commented that the one percent sales and use tax needed to be implemented and that the Council would not be responsible if they did not implement the same as there would be no monies to pay pensions when the same become due.

John Fazio, 1308 W.Va. Avenue, Clarksburg – opined that City Council has not been transparent with a number of things, more specifically, the demolition program. Mr. Fazio remarked that he was under the impression that the monies were being paid back. Mr. Fazio noted that 350

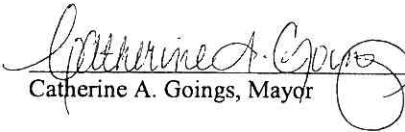
structures have been taken down and that the Landlords Association is not against the demolition program. Mr. Fazio informed of a situation where garbage service is unavailable due to the narrowness of the street and that pressure needed to be put on Waste Management to get the garbage thereat picked up.

With regard to the 350 structures that have been demolished, Mr. Fazio inquired as to how many vacant lots as a result thereof meet the code to be buildable. Mr. Fazio opined that the demolition liens are a mistake. Also, Mr. Fazio commented that fining the tenant, rather than the property owner, for various violations would allow the landlord to advise the court that the tenant refuses to comply. Mr. Fazio expressed concern with the number of people leaving the city and also suggested that the city expand its corporate boundaries. Mr. Fazio remarked that he was appalled with the unfunded liabilities.

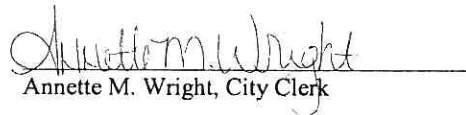
Mr. Fazio opined that increasing the staffing in Code Enforcement would not solve the problems associated with property concerns and that the complaint method is the least effective method in targeting blight. Mr. Fazio stated that the citizens have a right to know what codes/rules the City is operating under.

With no one else wishing to speak at this public hearing, Mayor Goings closed the same.

There being no further business to come before said special meeting of Council, **MOTION** by Councilmember Malfregeot, **SECONDED** by Councilmember Bailey and **APPROVED UNANIMOUSLY** to adjourn.


Catherine A. Goings, Mayor

Approved: May 1, 2014


Annette M. Wright, City Clerk

**ADDENDUM TO APRIL 17, 2014 SPECIAL COUNCIL MEETING
PUBLIC HEARING ON THE CITY OF CLARKSBURG'S
PROPOSED HOME RULE WRITTEN PLAN AND APPLICATION**

The following individuals spoke at the regular session of City Council held on April 17, 2014 at 7:00 p.m. rather than during the public hearing on the City's proposed Home Rule Plan and Application:

Jonathan A. Adler, 223 Hale Street, Charleston, WV – Mr. Adler advised that he was the Executive Director of the American Institute of Architects and that he represented the State Chapter. Mr. Adler spoke concerning the section of the Home Rule Application regarding W.Va. Code §5G-1-3 – procurement of architect-engineering services. Mr. Adler remarked that he is not against the City's Home Rule Plan but wanted to make sure that the section referenced above was not circumvented wherein the process would be hindered. Mr. Adler advised that he would work with the City to ensure that all were on the same page.

Ryan DeBarr, 118 Waverly Way, Clarksburg – Mr. DeBarr remarked that he was not opposed to the Home Rule Application and actually supported it in principle. Mr. DeBarr expressed his support of the 1% sales tax opining that such was the price we pay for living in our society. Mr. DeBarr commented that there were problems with the demolition program and that certain matters should not be removed from the control of the Fire Marshal.

A G E N D A

C I T Y O F C L A R K S B U R G

AGENDA FOR **REGULAR** MEETING OF COUNCIL OF THE CITY OF CLARKSBURG TO BE HELD **THURSDAY, APRIL 17, 2014** AT THE CLARKSBURG MUNICIPAL BUILDING – COUNCIL CHAMBERS, 222 WEST MAIN STREET, CLARKSBURG, WEST VIRGINIA AT **7:00 P.M.**

PRIOR TO THE REGULAR COUNCIL MEETING, COUNCIL WILL BE MEETING IN THE CITY MANAGER’S CONFERENCE ROOM AT 6:30 P.M. FOR A CONFERENCE SESSION

ORDER OF BUSINESS

1. ROLL CALL
2. PRAYER (*to be given by Councilmember Lopez*) & PLEDGE
3. APPROVAL OF MINUTES:
CONFERENCE (WORK) SESSION – MARCH 27, 2014
REGULAR SESSION – APRIL 4, 2014
4. PETITIONS, COMMUNICATIONS AND PUBLIC HEARINGS
5. CITY MANAGER’S REPORT/UPDATE
6. CITY CLERK’S INFORMATION:
 - A. ZONING FORM IN CONNECTION WITH A “NOTICE OF APPLICATION TO OPERATE: A PRIVATE CLUB, PRIVATE WINE RESTAURANT OR TAVERN” FILED BY B’S BAR, 236 MILFORD STREET - RETURNED TO APPLICANT ON APRIL 3, 2014
 - B. ZONING FORM IN CONNECTION WITH A “NOTICE OF APPLICATION TO OPERATE: A PRIVATE CLUB, PRIVATE WINE RESTAURANT OR TAVERN” FILED BY CRA OF CLARKSBURG, LLC dba DICKEY’S BARBECUE PIT, 538 EMILY DRIVE - RETURNED TO APPLICANT ON APRIL 4, 2014

7. UNFINISHED BUSINESS
 - A. CONSIDERATION OF **SECOND AND FINAL READING AND PUBLIC HEARING OF AN ORDINANCE OF THE CITY OF CLARKSBURG PROVIDING FOR THE ACQUISITION OF REAL PROPERTY KNOWN AS THE ROSE GARDEN THEATER, SITUATE AT 444 WEST PIKE STREET, IN THE CITY OF CLARKSBURG, COAL DISTRICT, HARRISON COUNTY, WEST VIRGINIA**
8. NEW BUSINESS
 - A. **CONSIDERATION OF FIRST READING OF AN ORDINANCE OF THE CITY OF CLARKSBURG ENACTING ARTICLE 112 OF PART ONE OF THE CODIFIED ORDINANCES OF THE CITY OF CLARKSBURG ADOPTING THE MUNICIPAL HOME RULE PILOT PROGRAM**
9. COUNCIL COMMENTS
10. ADJOURNMENT

APRIL 17, 2014

The Clarksburg City Council met in REGULAR SESSION on Thursday, April 17, 2014 at 7:00 P.M. at the Clarksburg Municipal Building – Council Chambers, 222 West Main Street, Clarksburg, West Virginia, with Mayor Goings presiding.

COUNCIL MEMBERS PRESENT:

Margaret Bailey
Robert Caplan
Sam Lopez*
Jim Malfregeot
Vice Mayor Gary Bowden
Mayor Catherine Goings

ALSO PRESENT:

Martin Howe, City Manager
Greg Morgan, City Attorney
Annette Wright, City Clerk

COUNCIL MEMBER(S) ABSENT:

Patsy Trecoast II

**(Note: Councilmember Lopez did not vote on any matters set forth on the agenda per court ruling).*

The prayer was given by Councilmember Lopez followed by the Pledge of Allegiance.

Council deviated from the agenda for the following presentation:

Councilmember Caplan, on behalf of the Mayor and Council, presented Ms. Adrienne Nichols of HOPE, Inc. with a proclamation proclaiming April, 2014 as “Sexual Assault Awareness Month” in the City of Clarksburg. Ms. Nichols introduced Patrolman McCullough of the Shinnston Police Department who accompanied her this evening for the acceptance of this proclamation and noted his work on this very worthwhile cause.

MOTION by Councilmember Bailey, **SECONDED** by Councilmember Caplan for approval of the minutes of the conference (work) session held on March 27, 2014. **MOTION APPROVED UNANIMOUSLY.**

MOTION by Councilmember Bailey, **SECONDED** by Councilmember Caplan for approval of the minutes of the regular session held on April 3, 2014. **MOTION APPROVED UNANIMOUSLY.**

Mayor Goings called for petitions, communications and public hearings with the following individuals appearing therefor:

Jonathan A. Adler, 223 Hale Street, Charleston, WV – Mr. Adler advised that he was the Executive Director of the American Institute of Architects and that he represented the State Chapter. Mr. Adler spoke concerning the section of the Home Rule Application regarding W.Va. Code §5G-1-3 – procurement of architect-engineering services. Mr. Adler remarked that he is not against the City’s Home Rule Plan but wanted to make sure that the section referenced above was not circumvented wherein the process would be hindered. Mr. Adler advised that he would work with the City to ensure that all were on the same page.

Ryan DeBarr, 118 Waverly Way, Clarksburg – Mr. DeBarr remarked that he was not opposed to the Home Rule Application and actually supported it in principle. Mr. DeBarr expressed his support of the 1% sales tax opining that such was the price we pay for living in our society. Mr. DeBarr commented that there were problems with the demolition program and that certain matters should not be removed from the control of the Fire Marshal.

Steven Haning, Gore Hotel/Diamond Development, LLC – appeared before Council to discuss Clarksburg Uptown, Inc. Mr. Haning apprised that he was President of Clarksburg Uptown, Inc. (a group of approximately 40 business and/or property owners) and informed that the group has been organized for about five years. Mr. Haning advised that the organization wanted to express its support of Council and be visible at the meetings noting the organization’s emphasis on working together and being positive and proactive.

Kenneth Jenkins, 407 Simpson Avenue – addressed Council concerning Waste Management stating that Waste Management is not placing the trash cans back in their original location and that often drivers have to swerve to miss the cans in/near the road and requested that the City contact Waste Management regarding this matter.

Doris Riegel, 217 Reno Street – appeared before Council to discuss parking issues on Reno Street. Ms. Riegel stated that the mirror located in the Greenbrier Motel parking lot needed to be relocated in order to see the oncoming traffic and that “No Parking” signs needed to be placed in certain areas due to the blind curve and narrowness of the street.

Joanne B. Feldman, 217 Reno Street – also addressed Council concerning Reno Street reiterating the concerns referenced by Ms. Riegel. Mayor Goings advised that the Administration would take another look at this matter.

Steve Goff, 794 Lake Floyd Circle, Bristol – appeared before Council to express his support of the City’s purchase of the Rose Garden Theater stating that the economic development pay-off could be proven regarding the attraction to the arts. Mr. Goff commented on the importance of joint involvement from public and private sectors, as well as lots of different strategies necessary for this project. Mr. Goff remarked that the City would not be just acquiring space but “magical public space” and applauded the City on its work on this matter.

AGENDA ITEM NO. 5: CITY MANAGER’S REPORT/UPDATE

April 17, 2014

Submitted by Martin G. Howe

General Updates

1. Sidewalk Program – Beginning Tuesday, May 1st, applications will be made available to the public at the Code Enforcement office. Applications will be accepted as funds are available on a first-come, first-serve basis. Permits will not be issued to start projects until Monday, June 16th.
2. Traders Alley Arts and Mural Project – The Mayor and I are continuing to work with Clarksburg Uptown to move the project forward. We have received permission from all the property owners to move the project forward upon review of the proposed artwork. Clarksburg Uptown is also in the process of finalizing a quote from contractors to paint the rear of buildings. Clarksburg Uptown is working with a \$56,000 budget for the project: the City budgeted \$16,000 in the 2013/2014 Budget and \$30,000 in 2014/2015 Budget and Clarksburg Uptown received \$10,000 from the Dominion Foundation for the project.

Economic Development

1. Rose Garden Theatre – Administration began advertising Request for Proposals for architectural engineering services. The advertisements are being run on Wednesday, April 16th and Wednesday, April 23rd. All proposals are due by Wednesday, April 30th at 2:00 p.m.
2. Ribbon Cuttings – Dickie’s Barbeque Pit, Immaculate Conception Church, Fantastic Sam’s and Britney Kemmerer’s.
 - a. Dickie’s Barbeque Pit – located at New Pointe Plaza will be having their Grand Opening on Thursday, April 24th at 11:30 a.m.
 - b. Immaculate Conception Parish Center will be having a Grand Opening and Ribbon Cutting on Friday, April 25th at 10:00 a.m.
 - c. Fantastic Sam’s – located at 160 Emily Drive at EastPointe has opened but will schedule a Ribbon Cutting in the near future.
 - d. Britney Kemmerer Hair Studio – located at 148 E. Pike Street has also opened and will have a Ribbon Cutting Ceremony soon.

Police & Fire

1. Police – Administration conducted and completed interviews with the nine (9) remaining candidates, as of Wednesday, April 16th. Employment offers will be extended to three (3) candidates to begin immediately and four (4) employment offers will be extended to begin

the week of prior to the Academy, which begins Monday, June 23rd upon receiving the final psychological assessments.

2. Fire –
 - a. Lieutenant Keough will be sworn in as Captain on Tuesday, April 22nd at 9:00 a.m. in Council Chambers. We welcome all of Council and public to attend.
 - b. Clarksburg Fire Department – hosted the Professional Firefighters of West Virginia for a three (3) day training session. Ten (10) separate paid fire departments attended the training.

AGENDA ITEM NO. 6: CITY CLERK'S INFORMATION:

- A. **ZONING FORM IN CONNECTION WITH A "NOTICE OF APPLICATION TO OPERATE: A PRIVATE CLUB, PRIVATE WINE RESTAURANT OR TAVERN" FILED BY B'S BAR, 236 MILFORD STREET – RETURNED TO APPLICANT ON APRIL 3, 2014**
- B. **ZONING FORM IN CONNECTION WITH A "NOTICE OF APPLICATION TO OPERATE: A PRIVATE CLUB, PRIVATE WINE RESTAURANT OR TAVERN" FILED BY CRA OF CLARKSBURG, LLC dba DICKEY'S BARBEQUE PIT, 538 EMILY DRIVE – RETURNED TO APPLICANT ON APRIL 4, 2014**

UNFINISHED BUSINESS:

- A. **CONSIDERATION OF SECOND AND FINAL READING AND PUBLIC HEARING OF AN ORDINANCE OF THE CITY OF CLARKSBURG PROVIDING FOR THE ACQUISITION OF REAL PROPERTY KNOWN AS THE ROSE GARDEN THEATER, SITUATE AT 444 WEST PIKE STREET, IN THE CITY OF CLARKSBURG, COAL DISTRICT, HARRISON COUNTY, WEST VIRGINIA**

City Clerk Wright announced that notices regarding the above-captioned public hearing appeared in *The Exponent Telegram* on April 8, 2014 and April 15, 2014 and that the publisher's certificate would be filed with the permanent record. Mayor Goings opened the public hearing with the following individual appearing therefor:

Chuck Arnett – Advised of his support of the above-captioned property purchase.

There being no one else wishing to speak, Mayor Goings closed the public hearing.

MOTION by Councilmember Bailey, **SECONDED** by Councilmember Caplan for approval of the above-captioned ordinance on second and final reading. Under discussion, Councilmember Bailey expressed her excitement with this project becoming a realization. Vice Mayor Bowden opined that we needed to address the people that helped do the market research and make them feel a part of this project and that we have capable, talented individuals within our community to help us move forward as we, the City, are not theater business people. **MOTION APPROVED UNANIMOUSLY.**

NEW BUSINESS:

- A. **CONSIDERATION OF FIRST READING OF AN ORDINANCE OF THE CITY OF CLARKSBURG ENACTING ARTICLE 112 OF PART ONE OF THE CODIFIED ORDINANCES OF THE CITY OF CLARKSBURG ADOPTING THE MUNICIPAL HOME RULE PILOT PROGRAM**

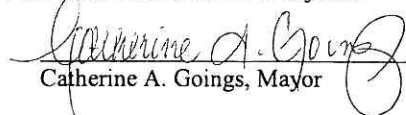
MOTION by Councilmember Bailey, **SECONDED** by Councilmember Caplan for approval of the above-captioned ordinance on first reading. Councilmember Bailey noted the public hearing held earlier this evening that afforded the public the opportunity to share their thoughts on this matter. Councilmember Lopez referenced the comment made at the public hearing regarding the unfunded liability pointing out that the City has one of the most financially-sound pensions in the State and expressed his confidence in the police and fire employees receiving their pensions upon retirement. With regard to annexation referenced during the public hearing, Mr. Morgan apprised

that under the revised statute, annexations are excluded from the Home Rule Program. Mr. Howe informed that the comments made during the public hearing concerning the City's Home Rule Application, as well as those comments made during this meeting regarding the same, would be provided to the Home Rule Board. **MOTION APPROVED UNANIMOUSLY.**

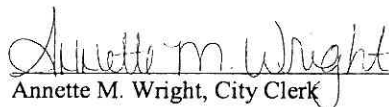
COUNCIL COMMENTS:

- Mayor Goings: Thanked Mr. Haning and noted the letters from Clarksburg Uptown supporting the efforts in the downtown community and also the letter to Harrison County Commission President Ron Watson regarding concerns with the proposed relocation of the community corrections facility to Main Street.
- Councilmember Bailey: Commented that Council needed to give a response concerning the Jackson Learning Center project with Mayor Goings concurring therewith.
- Councilmember Caplan: Remarked that the Rose Garden Theater is a magnet for many things and expressed his positive feelings in the project and the strong voice of the Uptown Clarksburg organization.
- Councilmember Lopez: Noted the positive agenda items and exclaimed that by purchasing the Rose Garden Theater, Clarksburg bought stock in itself.
- Councilmember Malfregeot: Stated that he would like for the Police Department to continue their foot patrols in the neighborhoods; opined that Council should hold a meeting with all neighborhood watch coordinators and inquired as to the status of the neighborhood watch signs. Mr. Howe informed that said signs were received today and that regarding the suggested meeting, a few weeks ago the neighborhood watch coordinators were invited to meet with some of the Department Heads and also provided with cards to hand out in their neighborhoods that contained phone contact information for various departments. Mr. Howe noted that said cards were also provided to Council (via attachment to packet).
- Vice Mayor Bowden: Thanked the Public Works and Police Departments, as well as Kathie Titus, for their help with the bike race. Vice Mayor Bowden inquired as to the corner property going into EastPointe with Mr. Howe apprising that MedExpress has received a permit therefor.

With "Happy Easter" wishes extended to all and there being no further business to come before said regular meeting of Council, **MOTION** by Councilmember Bailey, **SECONDED** by Councilmember Malfregeot and **APPROVED UNANIMOUSLY** to adjourn.


Catherine A. Goings, Mayor

Approved: May 1, 2014


Annette M. Wright, City Clerk

PUBLISHER'S CERTIFICATE

I, Loretta Greenhouse,
Advertising Manager of THE EXPONENT
TELEGRAM, a newspaper of general circulation
published in the city of Clarksburg, County and state
aforesaid, do hereby certify that the annexed:

PUBLIC HEARING

A PUBLIC HEARING WILL BE HELD PRIOR TO FINAL VOTE ON ADOPTION OF THE FOLLOWING ORDINANCE DURING A REGULAR MEETING OF COUNCIL OF THE CITY OF CLARKSBURG, TO BE HELD ON THURSDAY, MAY 1, 2014 AT 7:00 P.M. AT THE CLARKSBURG MUNICIPAL BUILDING, 222 WEST MAIN STREET, CLARKSBURG, AT WHICH TIME ANY INTERESTED PARTIES MAY APPEAR AT SAID MEETING AND BE HEARD WITH RESPECT TO THIS PROPOSED ORDINANCE. COPIES OF THIS PROPOSED ORDINANCE ARE AVAILABLE FOR PUBLIC INSPECTION IN THE OFFICE OF THE CITY CLERK AT SAID MUNICIPAL BUILDING DURING REGULAR BUSINESS HOURS. CITIZENS WITH TEXT TELEPHONES MAY CONTACT THE CITY THROUGH THE USE OF THE STATE RELAY SERVICE BY CALLING 1-800-982-8771.

AN ORDINANCE OF THE CITY OF CLARKSBURG ENACTING ARTICLE 112 OF PART ONE OF THE CODIFIED ORDINANCES OF THE CITY OF CLARKSBURG ADOPTING THE MUNICIPAL HOME RULE PILOT PROGRAM

PASSED BY THE CITY COUNCIL OF THE CITY OF CLARKSBURG ON FIRST READING ON THE 17TH DAY OF APRIL, 2014.

CATHERINE A. GOINGS,
MAYOR

ATTEST: ANNETTE M.
WRIGHT, CITY CLERK

PUBLIC HEARING

was published in THE EXPONENT-TELEGRAM 2
time(s) commencing on 04/22/2014 and ending on
04/29/2014 at the request of

CITY OF CLARKSBURG.

Given under my hand this 05/12/14.

The publisher's fee for said publication is: \$61.37.

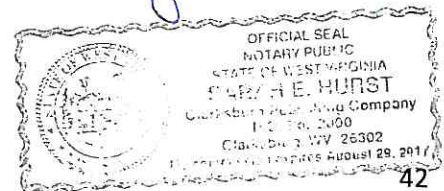
Advertising Manager of The Exponent-Telegram

Subscribed to and sworn to before me this 05/12/14

Notary Public in and for Harrison County, WV

My commission expires on

The 29th day of August 2017



A G E N D A

C I T Y O F C L A R K S B U R G

AGENDA FOR **REGULAR** MEETING OF COUNCIL OF THE CITY OF CLARKSBURG TO BE HELD **THURSDAY, MAY 1, 2014** AT THE CLARKSBURG MUNICIPAL BUILDING – COUNCIL CHAMBERS, 222 WEST MAIN STREET, CLARKSBURG, WEST VIRGINIA AT **7:00 P.M.**

PRIOR TO THE REGULAR COUNCIL MEETING, COUNCIL WILL BE MEETING IN THE CITY MANAGER’S CONFERENCE ROOM AT 6:30 P.M. FOR A CONFERENCE SESSION

O R D E R O F B U S I N E S S

1. ROLL CALL
2. PRAYER (*to be given by Councilmember Malfregeot*) & PLEDGE
3. APPROVAL OF MINUTES:
 - SPECIAL SESSION – APRIL 15, 2014
 - SPECIAL SESSION – APRIL 17, 2014
 - REGULAR SESSION – APRIL 17, 2014
4. PETITIONS, COMMUNICATIONS AND PUBLIC HEARINGS
5. CITY MANAGER’S REPORT/UPDATE
6. UNFINISHED BUSINESS
 - A. **CONSIDERATION OF SECOND AND FINAL READING AND PUBLIC HEARING OF AN ORDINANCE OF THE CITY OF CLARKSBURG ENACTING ARTICLE 112 OF PART ONE OF THE CODIFIED ORDINANCES OF THE CITY OF CLARKSBURG ADOPTING THE MUNICIPAL HOME RULE PILOT PROGRAM**
7. NEW BUSINESS
 - A. CONSIDERATION OF A **RESOLUTION** OF THE CITY COUNCIL OF THE CITY OF CLARKSBURG AUTHORIZING THE CLARKSBURG POLICE DEPARTMENT TO APPLY FOR THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FISCAL YEAR 2014 LOCAL SOLICITATION IN THE AMOUNT OF \$16,677.00 FOR THE PURCHASE OF A UNIVERSAL FORENSIC EXTRADITION DEVICE (UFED)

- B. CONSIDERATION OF A **RESOLUTION** OF THE COUNCIL OF THE CITY OF CLARKSBURG REQUESTING APPROVAL OF THE WEST VIRGINIA DEVELOPMENT OFFICE FOR A CHANGE OF SCOPE FOR A 2013 COMMUNITY PARTICIPATION GRANT IN THE AMOUNT OF \$3,000 AWARDED FOR CONTINUATION OF THE NEIGHBORHOOD SIDEWALK PROGRAM
- C. CONSIDERATION OF A **RESOLUTION** OF THE COUNCIL OF THE CITY OF CLARKSBURG REQUESTING APPROVAL OF THE WEST VIRGINIA DEVELOPMENT OFFICE FOR A CHANGE OF SCOPE FOR A 2014 COMMUNITY PARTICIPATION GRANT IN THE AMOUNT OF \$10,000 AWARDED FOR CONTINUATION OF THE NEIGHBORHOOD SIDEWALK PROGRAM
- D. CONSIDERATION OF A **RESOLUTION** OF THE COUNCIL OF THE CITY OF CLARKSBURG REQUESTING APPROVAL OF THE WEST VIRGINIA DEVELOPMENT OFFICE FOR A CHANGE OF SCOPE FOR A 2013 COMMUNITY PARTICIPATION GRANT IN THE AMOUNT OF \$9,400 AWARDED FOR CONTINUATION OF THE CITY’S FAÇADE IMPROVEMENT PROGRAM
- E. CONSIDERATION OF A **RESOLUTION** OF THE COUNCIL OF THE CITY OF CLARKSBURG REQUESTING APPROVAL OF THE WEST VIRGINIA DEVELOPMENT OFFICE FOR A CHANGE OF SCOPE FOR A 2014 COMMUNITY PARTICIPATION GRANT IN THE AMOUNT OF \$5,000 AWARDED FOR CONTINUATION OF THE CITY’S FAÇADE IMPROVEMENT PROGRAM
- F. CONSIDERATION OF A **RESOLUTION** OF THE COUNCIL OF THE CITY OF CLARKSBURG ADOPTING THE “LOCAL COMMUNITY” REVITALIZATION PLAN – AFFORDABLE HOUSING AND FAMILIES FOR THE PROPOSED “RESERVE AT ROSE BUD PROJECT”

8. COUNCIL COMMENTS

9. ADJOURNMENT

MAY 1, 2014

The Clarksburg City Council met in REGULAR SESSION on Thursday, May 1, 2014 at 7:00 P.M. at the Clarksburg Municipal Building – Council Chambers, 222 West Main Street, Clarksburg, West Virginia, with Mayor Goings presiding.

COUNCIL MEMBERS PRESENT:

Margaret Bailey
Robert Caplan
Sam Lopez*
Jim Malfregeot
Patsy Trecost II
Vice Mayor Gary Bowden
Mayor Catherine Goings

ALSO PRESENT:

Martin Howe, City Manager
Greg Morgan, City Attorney
Annette Wright, City Clerk

**(Note: Councilmember Lopez did not vote on any matters set forth on the agenda per court ruling).*

The prayer was given by Councilmember Malfregeot followed by the Pledge of Allegiance.

Council deviated from the agenda for the following presentations:

Mayor Goings explained the “Yard of the Month” program (presented by John Halterman of Beacon Wealth) wherein citizens are encouraged to maintain and beautify their properties and, in doing so, can enter to win a \$100 Lowes gift card and “Yard of the Month” certificate. One winner will be selected per month (April through October). On behalf of Beacon Wealth, Yvonne Loar and Jordan Greaver, recognized April’s “Yard of the Month” winners, Carl and Mittie Meahl of Baker Avenue, and presented them with the above items. Mayor Goings thanked Mr. Halterman and his staff for implementing this program.

Mayor Goings, along with Councilmember Malfregeot, presented Certificates of Recognition to the RCB Boys’ Basketball Team for an undefeated regular season, Big 10 Conference Sectional and Regional Championships and the WVSSAC 2014 AA Boys’ Basketball State Runner-Up Title. In addition, the team was presented with a plaque for the school’s display case in recognition of this outstanding accomplishment.

In recognizing the week of April 27-May 4, 2014 as “Days of Remembrance,” Vice Mayor Bowden read a proclamation in memory and recognition of the victims, as well as the survivors, of the Holocaust.

MOTION by Councilmember Bailey, **SECONDED** by Councilmember Caplan for approval of the minutes of the special session held on April 15, 2014. **MOTION APPROVED UNANIMOUSLY.**

MOTION by Councilmember Bailey, **SECONDED** by Councilmember Caplan for approval of the minutes of the special session held on April 17, 2014. **MOTION APPROVED UNANIMOUSLY.**

MOTION by Councilmember Bailey, **SECONDED** by Councilmember Caplan for approval of the minutes of the regular session held on April 17, 2014. **MOTION APPROVED UNANIMOUSLY.**

Mayor Goings called for petitions, communications and public hearings with the following individuals appearing therefor:

Rick Colvin, 518 Buckhannon Avenue – commended Council for the installation of the “No Jake Brake” signs throughout the city noting the safety issues of large trucks travelling at high speeds in residential areas. With the signs being taken down, Mr. Colvin apprised of his intentions to stand at the red light in his neighborhood to alert truck drivers as to the prohibited use of Jake Brakes. Also, Mr. Colvin opined that the traffic signal on Chestnut Street/Salvation Army location was unnecessary due to the low volume of traffic thereat.

Charles Brugnoli, 1514 W.Va. Avenue – appeared before Council concerning the abandoned property at 1512 W.Va. Avenue. Mr. Brugnoli noted a previous attendance at a council meeting wherein he discussed said property and stated that it has been a year since said property was condemned and that the same needed to be taken down. Mr. Brugnoli stated that said property presents safety and health hazards and advised of breathing problems his wife experienced last summer due to the condition of said property. Mr. Brugnoli suggested that Rainy Day Funds be used to demolish the structure if no monies were allotted for such demolition.

Joe Yeager (Altered Productions Institute for Creative Arts), 201 West Pike Street – appeared before Council to express his support of the City’s purchase of the Rose Garden Theater commenting that the theater is integral to reviving the community and advised that there is a need for this facility in order to bring quality productions to the area. Mr. Yeager apprised that his institute could assist in bringing in professional performers from other areas and encouraged Council to continue their efforts on this project and the marketing of the facility as a regional theater.

Tonya Collins, Anthony Avenue – addressed Council concerning the affordable housing project proposed for the Rose Bud area expressing her support of the same. Ms. Collins remarked that there are few modern housing options in the city and that Clarksburg would benefit from the development of this affordable housing project.

Mike Dektas (Miller Valentine Group), Cincinnati, OH – appeared before Council to apprise that he would be available to answer any questions concerning the affordable housing project proposed for the Rose Bud area.

Lesley Patsy, 108 Overlook Drive – apprised Council of her support of said proposed affordable housing project stating that such venture would be wonderful for the community. Ms. Patsy noted the salaries of many single parents and/or couples, as well as the various living expenses which can make finding quality, affordable housing difficult and commented on the need for such housing. Ms. Patsy remarked that there are many people in our community that have poor living conditions even though they have good jobs and that this project would provide a great opportunity to help people in our community that want to obtain quality homes/housing.

Rose Policano, 220 Anthony Avenue – expressed to Council her support of the proposed affordable housing project and referenced the positive comments relative thereto in today’s newspaper editorial. Ms. Policano commented that the construction of the project will bring several months of local employment and all materials therefor will be purchased locally. Ms. Policano presented Council with a petition containing 350+ signatures of individuals in support of the affordable housing project.

Mickey Petitto, 228 E. Main Street – Ms. Petitto spoke in favor of the affordable housing project commenting on the Policano family investment in the community. Ms. Petitto opined that the intended use (multi-family) was the best use of the property and commented that rent thereat would not be subsidized but that the residents would be employed and paying rent. Ms. Petitto stated that Clarksburg has substandard housing and is in need of this modern housing to entice and accommodate young couples as well as elderly citizens. Further, Ms. Petitto stated that she has not been able to measure any negative impact the project would have on the Hill ‘N Dale area.

AGENDA ITEM NO. 5: CITY MANAGER’S REPORT/UPDATE

May 1, 2014

Submitted by Martin G. Howe

General Updates

1. Paving Schedule – This is the final year of the seventeen (17) year paving plan. There are streets and alleys that have been passed throughout the years for various reasons. We will be putting together a plan for the other streets in the near future. The following is the bid schedule for this year:

Advertising	Wednesday, April 30 th & Wednesday, May 7 th
Non-Mandatory Pre-bid Meeting	Wednesday, May 21 st at 10 a.m. at MSES
Bid Opening	Wednesday, May 28 th at 2 p.m. in City Hall
Award Bid	Thursday, June 5 th at Council Meeting

2. Sidewalk Program – Applications became available today, May 1, 2014. As of the end of business, the Code Office distributed forty-six (46) applications, of which five (5) have already been completed and turned in for consideration. Applications will continue to be made available until funds are expended.
3. First Energy – Mon Power has notified the City they have filed with the Public Service Commission a request for an increase for 9.3% in base rates. “This increase is to ensure continued safe and reliable electric generation,” in addition to new jobs and additional tree trimming which will reduce the number and length of service interruptions. We do not anticipate the new rates going into effect until February 2015 as they will need to be authorized by the PSC.
4. Cable – As per the merger agreement between Time Warner and Comcast, our service will be going to Charter Cable Service. Charter Communications is the fourth largest cable operator in the United States. This acquisition/transfer can take up to a year or more pending FCC approval.

Economic Development

1. Rose Garden Theatre –Request for Proposals (RFPs) Architectural and Engineering Services was advertised in April with a deadline of Wednesday, April 30 for submittal. Twelve (12) firms submitted proposals. The selection committee will begin to review the information and interview selected firms. A recommendation will then be made to Council for which firm we should negotiate a contract with for approval.
2. Chestnut Street – Received an executed agreement back from the Division of Highways.
3. Highland Hospital – Dedication Ceremony will be held at the Hospital on Saturday, May 17th at 5:00 p.m. The Gala will immediately follow at the Village Square Conference Center.

Events

1. 3rd Annual 5K Run for Open Hearts – Saturday, May 10th. Registration and the Award Ceremony will be at Jackson Square and the Run will start at 8:30 a.m.

Regarding the Rose Garden Theater, Councilmember Bailey inquired if the public would be permitted to look inside noting the interest in the facility with Mr. Howe stating that such could not occur until the City closed on the property.

UNFINISHED BUSINESS:

A. CONSIDERATION OF SECOND AND FINAL READING AND PUBLIC HEARING OF AN ORDINANCE OF THE CITY OF CLARKSBURG ENACTING ARTICLE 112 OF PART ONE OF THE CODIFIED ORDINANCES OF THE CITY OF CLARKSBURG ADOPTING THE MUNICIPAL HOME RULE PILOT PROGRAM

City Clerk Wright announced that notices regarding the above-captioned public hearing appeared in *The Exponent Telegram* on April 22, 2014 and April 29, 2014 and that the publisher’s certificate would be filed with the permanent record. Mayor Goings opened the public hearing with the following individual appearing therefor:

Joe Fazio – stated that he would like some type of guarantee that the 1% sales tax would be used for police and fire pensions commenting that said 1% sales tax would negatively impact many people due to a 20% poverty rate in Harrison County. Mr. Fazio remarked that maybe something should be done with the B&O as opposed to the 1% sales tax. Mr. Fazio provided Council with a copy of picture of properties located on Dodge Court and expressed his confusion as to the appraised value of his property thereat due to the deteriorating conditions of surrounding properties. With regard to Code Enforcement, Mr. Fazio stated that he did not have a problem with Code personnel but rather with the system and further opining that such system brings about selective code enforcement. Mayor Goings apprised Mr. Fazio that she would meet with him to discuss his concerns.

There being no one else wishing to speak, Mayor Goings closed the public hearing.

MOTION by Councilmember Bailey, **SECONDED** by Councilmember Caplan for approval of the above-captioned ordinance on second and final reading. **MOTION APPROVED 5-0 (with Councilmember Trecoast abstaining due to his position as Chairman of the Home Rule Board).**

NEW BUSINESS:

- A. CONSIDERATION OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLARKSBURG AUTHORIZING THE CLARKSBURG POLICE DEPARTMENT TO APPLY FOR THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FISCAL YEAR 2014 LOCAL SOLICITATION IN THE AMOUNT OF \$16,677.00 FOR THE PURCHASE OF A UNIVERSAL FORENSIC EXTRADITION DEVICE (UFED)**

With said grant application having been available for public inspection in the City Clerk's office and Mr. Howe explaining that the grant would be used to obtain the above-captioned device which is used to retrieve digital information from phones and mobile devices, **MOTION** by Councilmember Bailey, **SECONDED** by Councilmember Caplan for adoption of the above-captioned resolution. **MOTION APPROVED UNANIMOUSLY.**

- B. CONSIDERATION OF A RESOLUTION OF THE COUNCIL OF THE CITY OF CLARKSBURG REQUESTING APPROVAL OF THE WEST VIRGINIA DEVELOPMENT OFFICE FOR A CHANGE OF SCOPE FOR A 2013 COMMUNITY PARTICIPATION GRANT IN THE AMOUNT OF \$3,000 AWARDED FOR CONTINUATION OF THE NEIGHBORHOOD SIDEWALK PROGRAM**

MOTION by Councilmember Bailey, **SECONDED** by Councilmember Caplan for adoption of the above-captioned resolution. With regard to agenda items B and C, Mr. Howe explained that said funds would be used for infrastructure as multiple sidewalks will be put out to bid. With regard to agenda items D and E, said funds would be used for the Traders Alley painting/mural project. **MOTION APPROVED UNANIMOUSLY.**

- C. CONSIDERATION OF A RESOLUTION OF THE COUNCIL OF THE CITY OF CLARKSBURG REQUESTING APPROVAL OF THE WEST VIRGINIA DEVELOPMENT OFFICE FOR A CHANGE OF SCOPE FOR A 2014 COMMUNITY PARTICIPATION GRANT IN THE AMOUNT OF \$10,000 AWARDED FOR CONTINUATION OF THE NEIGHBORHOOD SIDEWALK PROGRAM**

MOTION by Councilmember Bailey, **SECONDED** by Councilmember Caplan for adoption of the above-captioned resolution. **MOTION APPROVED UNANIMOUSLY.**

- D. CONSIDERATION OF A RESOLUTION OF THE COUNCIL OF THE CITY OF CLARKSBURG REQUESTING APPROVAL OF THE WEST VIRGINIA DEVELOPMENT OFFICE FOR A CHANGE OF SCOPE FOR A 2013 COMMUNITY PARTICIPATION GRANT IN THE AMOUNT OF \$9,400 AWARDED FOR CONTINUATION OF THE CITY'S FAÇADE IMPROVEMENT PROGRAM**

MOTION by Councilmember Bailey, **SECONDED** by Councilmember Caplan for adoption of the above-captioned resolution. **MOTION APPROVED UNANIMOUSLY.**

- E. CONSIDERATION OF A RESOLUTION OF THE COUNCIL OF THE CITY OF CLARKSBURG REQUESTING APPROVAL OF THE WEST VIRGINIA DEVELOPMENT OFFICE FOR A CHANGE OF SCOPE FOR A 2014 COMMUNITY PARTICIPATION GRANT IN THE AMOUNT OF \$5,000 AWARDED FOR CONTINUATION OF THE CITY'S FAÇADE IMPROVEMENT PROGRAM**

MOTION by Councilmember Bailey, **SECONDED** by Councilmember Caplan for adoption of the above-captioned resolution. **MOTION APPROVED UNANIMOUSLY.**

At this time, Council deviated from the agenda to allow Mr. David Romano the opportunity to address Council. Mr. Romano explained that he wanted to speak concerning the affordable housing project resolution on the agenda and did not realize he would not have an opportunity to do so at the time such came up for consideration.

Mr. David Romano noted those in attendance this evening from the Hill 'N Dale area and stated that he had been asked to speak on the affordable housing project. Mr. Romano opined that said location was not the right place for the type of housing being proposed commenting on the concerns associated with the Oak Mound Complex. Mr. Romano provided Council with a petition against building additional low income housing in the Oak Mound area which had been signed by several citizens. Mr. Romano explained that many of the residents are concerned that the proposed housing project would end up like the Oak Mound Complex and further that the Oak Mound Complex would negatively impact the proposed housing project. Mr. Romano opined that the proposed housing project would adversely impact the Hill 'N Dale area and requested that Council table this matter to see if the project could be placed somewhere else where it could be an enhancement.

F. CONSIDERATION OF A RESOLUTION OF THE COUNCIL OF THE CITY OF CLARKSBURG ADOPTING THE "LOCAL COMMUNITY" REVITALIZATION PLAN – AFFORDABLE HOUSING FOR FAMILIES FOR THE PROPOSED "RESERVE" AT ROSE BUD PROJECT"

MOTION by Councilmember Bailey, **SECONDED** by Councilmember Caplan for adoption of the above-captioned resolution. Under discussion, Vice Mayor Bowden inquired as to the involvement of the developer beyond one year with Mr. Mike Dektas of Miller Valentine Group advising that said proposed project is very different than the Oak Mound project with a completely different tenant profile. Mr. Dektas explained the financial structure of said project wherein the same consists of all private monies and the need to annually certify the properties for the tax credits. Mr. Dektas pointed out the \$6 million investment which the developers are financially responsible therefor. Mayor Goings noted the two neighborhood meetings held to provide the public an opportunity to learn and ask questions about the project which generated very low attendance. Mayor Goings stated that whatever decision is made this evening would be done so in the best interest of the community as a whole. Councilmember Bailey expressed that she believed the project to be positive for the community and city and that she believed the developers would ensure the success of the same. **MOTION APPROVED UNANIMOUSLY.**

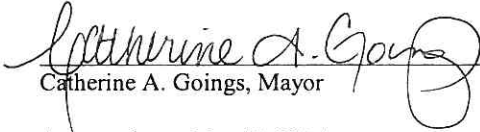
COUNCIL COMMENTS:

- | | |
|---------------------------|--|
| Councilmember Bailey: | Advised of the Highland Hospital grand opening on May 17 th . |
| Councilmember Malfregeot: | Thanked the Public Works Department for the street cleaning and pothole repairs and commented on the positive coverage of the City's purchase of the Rose Garden Theater. |
| Councilmember Trecost: | Requested that Council have an opportunity to view the proposed mural work for Traders Alley with Mayor Goings informing that once the property owners are in agreement, the same would come before Council; inquired as to the status of a demolition order for the property located on Tuna Street with Mr. Howe advising of the need to settle the issues with the outside entities. In response to Councilmember Trecost's inquiry as to what could be done to move this matter along, Mr. Howe suggested a letter to the WVHDF requesting permission to revolve the funds, as well as calls to the various entities/agencies as to such deplorable property conditions. |

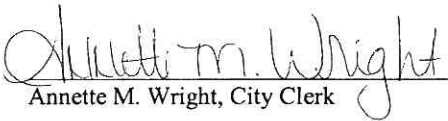
Vice Mayor Bowden:

Inquired as to the "No Jake Brake" signs with Mr. Howe apprising of the memo from the DOH regarding its removal of the same. Mr. Howe encouraged calls to the DOH regarding such removal. Regarding the Rose Garden Theater, Vice Mayor Bowden opined on the importance of forming a committee of private individuals to help take this project forward.

Following birthday wishes to Councilmember Trecoast, **MOTION** by Councilmember Trecoast, **SECONDED** by Councilmember Malfregeot and **APPROVED UNANIMOUSLY** to adjourn.


Catherine A. Goings, Mayor

Approved: May 15, 2014


Annette M. Wright, City Clerk

AN ORDINANCE OF THE CITY OF CLARKSBURG ENACTING ARTICLE 112 OF PART ONE OF THE CODIFIED ORDINANCES OF THE CITY OF CLARKSBURG ADOPTING THE MUNICIPAL HOME RULE PILOT PROGRAM.

WHEREAS, the City Council of the City of Clarksburg, West Virginia, authorizes the City of Clarksburg to submit to the Municipal Home Rule Board an application to the Municipal Home Rule Pilot Program consistent with W. Va. Code § 8-1-5a, requesting for approval of the City of Clarksburg's Municipal Home Rule Plan;

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

That, on behalf of the City of Clarksburg, the Mayor, and the City Administration are hereby authorized and requested to submit to the Municipal Home Rule Board, in accordance with the requirements of W. Va. Code § 8-1-5a and application guidelines of the Municipal Home Rule Board, an application to the Municipal Home Rule Pilot Program, and to request approval by the Board of the City of Clarksburg Home Rule Plan; thereby allowing the City of Clarksburg to be considered for participation in the West Virginia Home Rule Pilot Program. The Mayor and the Administration are further authorized to do all things reasonably necessary to obtain approval by the Board of this application.

This Ordinance shall be effective upon passage.

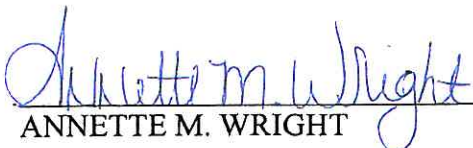
Passed by Council of the City of Clarksburg on FIRST READING on this 17th day of April, 2014.

Passed by Council of the City of Clarksburg on SECOND AND FINAL READING on this 1st day of May, 2014.



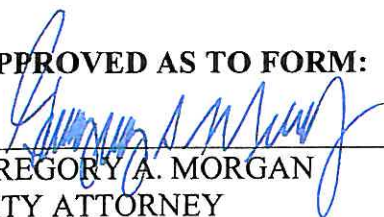
CATHERINE GOINGS, MAYOR

ATTEST:



ANNETTE M. WRIGHT
CITY CLERK

APPROVED AS TO FORM:



GREGORY A. MORGAN
CITY ATTORNEY

LAW OFFICES OF
YOUNG MORGAN & CANN, PLLC

363 LEE AVENUE

CLARKSBURG, WEST VIRGINIA 26301

CARMINE J. CANN
JAMES V. CANN
GREGORY A. MORGAN

(304) 624-5687
FAX (304) 624-4006

ROGER J. MORGAN (2011)
JAMES CANN (1970)
LLOYD H. YOUNG (1976)

Greg Morgan
City Attorney of Clarksburg

Date: March 13, 2014

Applicant: CITY OF CLARKSBURG, WEST VIRGINIA

Re: City of Clarksburg Municipal Home Rule Proposal

Ladies and Gentlemen:

As City Attorney for the City of Clarksburg, I have reviewed West Virginia Code § 8-1-5a, Municipal Home Rule Pilot Program Application Guidelines (rev. November 2, 2007), the proposed City of Clarksburg Municipal Home Rule Plan, and other documents related thereto (collectively, the "Plan") as I have deemed necessary for the purposes of this opinion.

Based upon the examination of such documents and my understanding of the intent of the proposed provisions contained in the Plan, it is my opinion that the Plan complies with the required statutory requirements in that:

1. The Plan does not contain any proposed changes to ordinances, acts, resolutions, rules or regulations that are contrary to the:
 - i. US of WV Constitutions,
 - ii. Chapter 60 – A Uniform Controlled Substances Act,
 - iii. Chapter 61 – Crimes and Their Punishment,
 - iv. Chapter 62 – Criminal Procedure – of this code;
2. The Plan does not contain any proposed changes to ordinances, acts, resolutions, rules or regulations that would create a defined contribution employee pension or retirement plan for its employees currently covered by a defined benefit pensions plan.

The Municipal Home Rule Board may rely upon this opinion.

Very truly yours,

YOUNG MORGAN & CANN, PLLC

By: _____


Gregory A. Morgan



CITY OF CLARKSBURG

WEST VIRGINIA

OFFICE OF
CITY MANAGER

May 20, 2014

West Virginia Home Rule Pilot Program
West Virginia Department of Commerce
State Capital Complex
Building 6, Room 525
Charleston, West Virginia 25303

Re: West Virginia Fees Statement

Dear Members of the Home Rule Board:

In regard to the Section III: Affidavits Application Checklist requirements, please accept this as the City of Clarksburg's State of West Virginia Fees Statement. This letter is to acknowledge that the City of Clarksburg is current on all fees and has no outstanding fees due to the State of West Virginia.

If you have any questions or concerns moving forward, please do not hesitate to call my office, Monday through Friday, 8am to 4:30pm at 304/624.1677 or contact me by email at mhowe@cityofclarksburgwv.com.

Respectively,

Martin Howe
City Manager