



City of Clarksburg

West Virginia

**MUNICIPAL HOME RULE PILOT
PROGRAM APPLICATION**

Insert Mayor's & Manager's Letter

The letter submitting application will be inserted upon Council's
Authorization to submit Plan after Public hearing to be held,
Thursday, April 17th at 6pm.

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**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	46
(b) Retirees	20	19
(c) Surviving Spouses	12	13
(d) Disabled Members	12	12
(e) Deferred Vested Members	3	3
(f) Total	93	93
	\$8,767,923	\$9,302,642
	\$8,803,311	\$9,035,334
	\$1,747,573	\$1,979,201
	\$2,811,475	\$3,222,192
	\$1,358,061	\$1,427,140
	\$23,488,343	\$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 end June 30, 2014.

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	No.		No.	
(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%
		FYE 2013		FYE 2014
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 & Peanlty	\$ 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.

Ordinances

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Ordinances to be drafted for review if City is accepted into the Home
Rule Pilot Program.

Insert Hearing Mandate Verification

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Verification to be inserted upon completion of the Public Hearing.

Insert City Council Agenda and Public Hearing

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To be inserted after Agenda is finalized for the Public Hearing,
Thursday, April 17th at 6pm.

Insert Publication Mandate Verification

Friday, March 14, 2014

B9

**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.

LAW OFFICES OF
YOUNG MORGAN & CANN, PLLC

363 LEE AVENUE

CLARKSBURG, WEST VIRGINIA 26301

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ROGER J. MORGAN (2011)
JAMES CANN (1970)
LLOYD H. YOUNG (1978)

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