

**An Ordinance Amending the Codified Ordinances of the City of Vienna,
Creating a section Titled “Municipal Home Rule.”
PART TWO – MUNICIPAL HOME RULE**

CHAPTER 1 - MUNICIPAL HOME RULE

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Article 101 - Purpose.

This chapter has been created for all ordinances enacted pursuant to the authority granted to the City of Vienna under W. Va. Code § 8-1-5a, establishing the municipal home rule pilot program to evaluate the viability of allowing municipalities to have broad-based state home rule to carry out their duties and responsibilities in a more cost-effective, efficient and timely manner, leading to stronger municipalities and improved urban and state development.

These ordinances are pursuant to the provisions of the City of Vienna Home Rule Plan approved by the municipal home rule board on October 6, 2014.

Article 102 - Definitions.

a. Reserved

Article 103 - Severability; interpretation; conflict.

(a) The sections, subsections, paragraphs, sentences, clauses and phrases of this chapter and all provisions adopted by reference in this chapter are severable, so that if any section, subsection, paragraph, sentence, clause and phrase of this chapter or any provision adopted by reference in this chapter is declared unconstitutional or invalid by a valid judgment of a court of competent jurisdiction, such judgment shall not affect the validity of any other section, subsection, paragraph, sentence, clause and phrase of this chapter or of any provision adopted by reference in this chapter, it being the intent of council that it

would have enacted this chapter and all provisions adopted by reference in this chapter without such invalid or unconstitutional provisions.

(b) This chapter shall be construed liberally in order to achieve the purposes and intent enunciated in Article 101.

(c) In the event that any of the provisions of this chapter conflict with other provisions of the Code of the City of Vienna, the provisions of this chapter shall prevail.

Article 104 - 112 Reserved.

Article 113 - Disposition of municipal property to nonprofit organizations.

- (a) The City of Vienna may lease or convey city property to nonprofit organizations for less than fair market value, and without public auction, when the nonprofit organization is providing services that benefit the public and are services that the city could lawfully provide; provided that city council has made a factual determination that:
- (1) There is a lack of need for such property by the city in comparison to the benefit to the city if property is leased or conveyed; and
 - (2) There is a demonstrable need for such property by the nonprofit organization to be able to perform the services benefiting the public.
- (b) In the event the nonprofit organization should cease to provide such services to the public, the property shall by operation of law, revert to and vest in the city, and such nonprofit organization shall thereafter have no right, title, or interest therein or thereto.
- (c) Any lease, deed or other instrument of property transfer executed pursuant to this section shall contain the reversion wording in subsection (b).

Article 114. Conveyance of city property without auction.

(a) Conveyance without auction

1. The City of Vienna may sell its real or personal property valued in excess of \$1,000.00 for fair market value, but without public auction, provided that city council has made a factual determination that the property is to be used to facilitate economic development projects and/or to provide a necessary and convenient resource for the benefit of the citizenry.
2. With respect to real property, fair market value may be determined by a Real Estate Appraiser licensed by the State of West Virginia.
3. Any proposed conveyance of city property pursuant to this section shall be published as a Class II legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq., and the publication area for the publication shall be the City of Vienna.
4. Prior to the approval by city council of any conveyance of city property pursuant to this section, city council shall be provided with documentation evidencing that all project plans have been

approved by all necessary and relevant state and/or municipal committees and departments, all necessary and relevant state and/or municipal permits are in place or are approved subject to purchase of the property, and funding for the project secured.

5. Any full or part time employee, elected official, or their immediate family members, business partners or associates, are expressly prohibited from purchasing any public property under this article except at public auction unless otherwise prohibited by statute.

(b) Conveyance by Sealed Bid

- a. Except as otherwise provided in subsection (a) of this article or elsewhere in the Vienna Municipal Code, all municipal property, both real and personal, shall be sold only after the receipt of sealed bids after the time and place of the sale has been published as a Class II legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq., and the publication area for the publication shall be the City of Vienna.
- b. The first publication is to be made at least fifteen (15) days before the date when bids are to be received and opened.
- c. The property shall be sold to the highest bidder but the City shall have the right to reject any and all bids for any reason.
- d. If the property is not sold pursuant to such advertisement, the City, by resolution, may set a date for an open meeting of City Council to be held within sixty (60) days after the date when the bids were opened.
- e. At the meeting held pursuant to such resolution, the City may sell by public auction the property for a consideration not less than the highest sealed bid previously received pursuant to the advertisement.
- f. At the meeting, any interested party may bid for cash, certified check, or other surety that is acceptable to the City and the property shall be sold to the highest bidder. The City shall have the right to reject any and all bids.
- g. The City may require a written confirmation of bids received at such called meeting before selling the property at auction, but it shall not be necessary that sealed bids be received before conducting the auction.

(c) Conveyance by Auction

- a. The City of Vienna may, at its election, continue to convey any city property, real or personal, utilizing the procedure set out in W.Va. Code § 8-12-18(b).

Under this section and pursuant to authority granted under W. Va. Code § 8-1-5a, the city is exempt from the auction requirement imposed by W. Va. Code § 8-12-18(b) under the circumstances stated herein.

Article 115 – Eyesore and Dilapidated Structures

For buildings, as defined in the Ordinances of the City of Vienna Article 1735.01, which have been determined to be a hazard to the public health, safety and welfare in accord with the procedure set out in 1735, any costs incurred by the City to rehabilitate or remove the offending structure shall constitute a lien against the property, without the necessity of obtaining a court order or judgment. Said lien may be filed in the office of the Clerk of the Wood County Commission and may be executed upon the same as any other judgment including, but not limited to the garnishment of wages or forced sale of the property, with the city becoming lien holder first in priority. Said judgment is to cover only the actual costs and fees for the rehabilitation or demolition of the property. Said lien shall take into consideration and it shall be credited against the amount of the lien the proceeds of the sale of any salvaged material. The City shall have the express power and authority to garnish wages with the Order of the Court. Once the costs of the City have been recovered, a release for the lien shall be filed with the County Clerk's Office.

Article 116 – Regulation of Wrecker's Operating Within Municipal Boundaries

1. No motor vehicle used for the business or purpose of towing, hauling or carrying wrecked or disabled vehicles shall be engaged in the business of towing, hauling or carrying wrecked or disabled vehicles unless it is equipped with sufficient materials so as to clean up motor vehicle fluids (gasoline, diesel fuel, battery fluid, water or acid, motor oil, transmission fluid, radiator fluid, water, and the like) from both commercial and private vehicles.
2. Clean-up normally includes the use of granular absorbents or vermiculite, floor sweep, peat moss, pads and booms, clay, topsoil or other materials or devices used in the common course of removing fluids from roadways, parking lots, or other surfaces designed and utilized for vehicular travel.
3. Absorbent material used to clean up fluids may be bagged in heavy-duty trash bags, wrapped or 'diapered' in plastic sheeting, or containerized in pails or barrels. The material should be off the travel portion of the roadway and may remain there for a reasonable time to allow for disposal by the operator of the motor vehicle used to tow, haul or carry away wrecked or disabled vehicles. It is the responsibility of the operator of the motor vehicle used to tow, haul, or carry a wrecked or disabled vehicle to lawfully dispose of any cleaned up materials and/or fluids.
4. Either the Vienna Fire Chief or the Vienna City Police may issue a citation under this Article. Any fine issued is to be paid through the Vienna Municipal Court.
5. **Penalty** - An operator of a motor vehicle used for the business or purpose of towing, hauling or carrying wrecked or disabled vehicles who tow, haul or carry a wrecked or disabled vehicles or who attempts to haul, tow, or carry a wrecked or disabled vehicle which is not

equipped with appropriate materials to clean up said fluids or who fails to clean up said fluids, shall be fined \$275.

Article 117 - 125 Reserved.

Article 126 – Building and Zoning Administration and Enforcement of external sanitation and common nuisance violations – Citations and Enforcement.

(a) Purpose and applicability.

- a. The purpose of this section is to provide additional and alternative methods and processes to enforce the municipal code provisions regarding exterior sanitation and common nuisances related to property located within the city in a fair, speedy and inexpensive manner, and to improve compliance with such provisions.
- b. This section shall be in addition to those methods and processes otherwise contained in the Municipal Code of the City of Vienna and shall be applied at the discretion of the enforcement official enforcing the provisions of this section.
- c. This Article shall apply to Article 1721, 1509, 1505, 1329.08, 1145, 909, 537, and 311 of the Vienna Municipal Code including, but not limited to:
 - i. Sanitation (IPMC 2012 or as amended)
 - ii. Drainage (IPMC 2012 or as amended)
 - iii. Sidewalks in disrepair (IPMC 2012 or as amended)
 - iv. High weeds/grass (Vienna Codified Ordinances Article 537 or IPMC 2012 or as amended);
 - v. Exterior garbage accumulation (Vienna Codified Ordinances Article 537 or IPMC 2012 or as amended)
 - vi. Grafitti (IPMC 2012 or as amended)
 - vii. Open storage in residential districts (Vienna Codified Ordinances, Article 537 or IPMC 2012 or as amended);
 - viii. Nonresident recreational vehicles (As set out in the “Rules and Regulations Governing Camper Vehicles, Recreational Vehicles, and Auto Campgrounds” as set out in the Vienna Municipal Code at “Part Eleven – Health and Sanitation”).
- d. The Building Inspector, Code Enforcement Officer, Vienna Fire Chief, and the Vienna Police shall have authority to enforce the provisions of this section and shall be referred to herein collectively as "enforcement officials."

- (b) **Investigations.** Upon receipt of information or observation of circumstances indicating the likelihood of a violation of any provision of the Municipal Code of the City of Vienna as set out in 126(a)(a)(c), the enforcement official shall investigate the facts and may, to the extent permitted by law, make an inspection of the premises.

(c) **Notice of violation.**

- a. If an enforcement official determines that a code violation exists, the enforcement official shall provide written notice of such violation to the person having either ownership or control of any land, building, structure, sign, property, licensed or permitted business or operation which is in violation, and shall order that the violation be corrected. Notice of the violation shall be served in person and, if the enforcement official is unable to serve the Notice of Violation in person, then service shall be made by posting the said notice in a conspicuous place on the violating property. Further, the enforcement official shall serve the property owner or person in control of the violating property in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that a method of service effectuated by a mailing by the clerk of a court (e.g., service pursuant to West Virginia Rule of Civil Procedure 4(d)(1)(D) – certified mail) shall be deemed to be effectuated by a mailing by an enforcement official. If service is made by certified mail pursuant to West Virginia Rule of Civil Procedure 4(d)(1)(D) and delivery of the notice of the violation is refused, the enforcement official, promptly upon the receipt of the notice of such refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, (1) a copy of the notice of the violation(s) (2) a notice that despite such refusal, the notice of the violation(s) is valid, and (3) advising that the City will proceed to enforce the notice of violation(s). So long as such first class mailing is not returned as undeliverable by the U.S. Postal Service, service of the notice of violation(s) will be conclusively presumed to have been effectuated. Proof of service shall be made at the time of service by a written declaration, under oath, executed by the enforcement official effecting service and shall declare the time, date and manner by which service was made.
- b. Any notice of violation(s) under this section shall be in writing and shall contain the following:
 - i. The date the notice of violation is given;
 - ii. The name and address of the person(s) charged with the violation;
 - iii. The section of the ordinance being violated;
 - iv. The nature of the violation;
 - v. A statement of the action required to be taken in order to correct the violation;
 - vi. The time period allowed for the violation to be corrected prior to the issuance of a citation.
 1. When determining the time period allowed for correction, the enforcement official shall take into consideration the threat posed by the violation to the health, safety and welfare of the public and the nature

of the work required to correct the violation, provided that no such time period for correction shall be less than five days;

- vii. The maximum fines that may be assessed if the violation is not corrected; and
- viii. The name, address and telephone number of the enforcement official issuing the notice of violation.

(d) Issuance of citations.

- a. If the violation has not been corrected within the period established in the notice of violation, or is a repeat violation as set forth in **Article 126(g)**, the enforcement official may issue a citation to the violator. The citation shall be in writing and shall contain the following:
 - i. The date the citation is issued;
 - ii. The name and address of the person(s) charged with the violation;
 - iii. The section of the ordinance that has been violated;
 - iv. The nature of the violation;
 - v. The place and time the violation occurred;
 - vi. The date the notice of violation was given;
 - vii. The amount of the fine imposed for the violation;
 - viii. The name, address, and telephone number of the enforcement official issuing the citation; and
 - ix. The name, address and telephone number of the office of the Municipal Court Clerk, where fines are to be paid, and of the municipal court, where citations may be appealed.
- b. A citation shall be in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that a method of service effectuated by a mailing by the clerk of a court (e.g., service pursuant to **West Virginia Rule of Civil Procedure 4(d)(1)(D)**) shall be deemed to be effectuated by a mailing by an enforcement official. If service is made by certified mail pursuant to **West Virginia Rule of Civil Procedure 4(d)(1)(D)** and delivery of the citation is refused, the enforcement official, promptly upon the receipt of the notice of such refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, (1) a copy of the citation, (2) a notice that despite such refusal, the citation is valid, and (3) notice that the City will proceed to enforce the citation; so long as such first class mailing is not returned as undeliverable by the U.S. Postal Service, service of the citation will be conclusively presumed to have been effectuated. Proof of service shall be made at the time of service by a written declaration, under oath, executed by the enforcement official effecting service and shall declare the time, date and manner by which service was made.

- c. The Building Inspector shall be authorized to issue citations for any violation found in Article 1721. The Code Enforcement Officer shall have the authority to issue citations for any violation of City Ordinance 1505 (the Fire Prevention Code) and Article 1509 (Outdoor Fires).
- (e) **Penalties.** Any person issued a citation pursuant to **Article 126(d)** shall be punished by a fine as follows: within any 12-month period, \$100.00 for the first citation, \$200.00 for the second citation, \$300.00 for the third citation, and \$500.00 for the fourth citation and each citation thereafter. Every day the violation remains uncorrected can be a separate violation.
- (f) **Nonpayment of fines.** All fines imposed by citations under this section shall be due within ten days of service of the citation except as otherwise set forth herein. The failure to pay when due any fine imposed under this section shall constitute a failure to appear or otherwise respond under WV Code 8-10-2b(c) and may result in notification to the DMV.
- (g) **Repeat violations.** If a person has been previously served with a notice of violation for a violation contained in Article 126(a), whether or not the violation is timely corrected or a citation is issued, he shall not be entitled to receive an additional notice(s) of violation for the same category of violation if the same category of violation is repeated within a six-month period of the issuance of either a notice of violation or a citation, the enforcement official may proceed in accordance with Article 126(d) without further notice to the violator.
- (h) **Appeal.**
 - a. Any person who is issued a citation shall pay the fine indicated for the violation, as set forth in Article 126(e), in full to the office of the Vienna Municipal Court Clerk within ten days of service of the citation. Any person alleging he or she was improperly issued such citation may, within ten days of service of such citation, file a petition for appeal of the citation, along with the required bond, with the Vienna Municipal Court Clerk in accordance with the following:
 - i. In order to properly and timely appeal his or her citation, within ten days of service of the citation, the recipient of the citation shall pay the required amount of the applicable fine in full to the municipal court clerk, which amount will be held by the municipal court as bond pending hearing and resolution of the case by the municipal court and the Vienna Municipal Court Clerk shall issue a receipt to the recipient of the citation showing the amount of the bond paid. In addition to the bond, the recipient of the citation shall file with the Vienna Municipal Court Clerk a petition for appeal of the citation. If any petition for appeal filed in accordance with this

section is not timely filed or is not accompanied with the required bond, the recipient of the citation shall be deemed to have waived his or her right to appeal the citation, and such petition shall be summarily denied as untimely filed; provided, however, that nothing set forth hereinabove shall prevent the municipal court judge from finding, upon a proper application and showing, that the recipient of the citation suffers from financial hardship, and, as a result, waiving the requirement that the bond be posted.

- ii. Any petition for appeal filed with the Vienna Municipal Court Clerk must be in writing, on the form to be provided by the municipal court clerk, and must be signed by the recipient of the citation affirming that the contents of the petition are true and accurate to the best of the recipient of the citation's knowledge at that time. Such petition for appeal shall state the facts and reasons in support of the petition. Upon filing any such petition for appeal with the municipal court clerk, the recipient of the citation shall serve a copy of the petition and receipt showing proof of bond, or application for waiver thereof, upon the city attorney.
- b. Upon filing of a petition for appeal with the municipal court clerk, the clerk or his or her designee shall place the case on the municipal court docket, set the case for hearing within 30 days from the date of the filing of the petition for appeal, provide a notice of hearing to the recipient of the citation, and forward a copy of the petition to the enforcement official who issued the citation. Upon receipt of the petition, the enforcement official shall cause a copy of the citation at issue to be forwarded to the Vienna Municipal Court Clerk who shall file it as the original complaint alleging the violation indicated therein.
- c. The municipal court shall treat the citation itself as the original complaint before the court. At the close of all of the evidence presented at the hearing on the petition for appeal, should the municipal judge find against the recipient of the citation, the bond posted by the recipient of the citation shall be applied as payment for the fine imposed for the violation. Should the court find in favor of the recipient of the citation, the bond, if applicable, shall be refunded to the recipient of the citation by the municipal court clerk, and the citation shall be dismissed.

Art. 127. Authority of city to file liens on real property for costs incurred in abating exterior sanitation and common nuisance violations and for costs incurred in repairing, relaying, or constructing sidewalks.

(a) The city may file a lien on real property for costs incurred in abating exterior sanitation and common nuisance violations, which include, but are not limited to,

those violations set forth in Article 126, and when the following occurs:

- (1) A property owner, after receiving lawful notice pursuant to **Article 126** or pursuant to any other applicable provision of the Municipal Code, fails to abate the violation; and
 - (2) The enforcement official lawfully enters said property and performs the work necessary to abate the violation; and
 - (3) A notice of the costs of abatement is sent to the property owner and those costs are not remitted within a time satisfactory to the city.
- (b) Further, the city may file a lien on real property for costs incurred in repairing, relaying, or constructing sidewalks in accordance with **Article 909** of the Municipal Code of the City of Vienna.

**An Ordinance Amending the Codified Ordinances of the City of Vienna,
Chapter 7, Business and Taxation Code Creating a new Article numbered
as 754 and titled “Consumer’s Sales and Use Taxes”**

**Chapter 7 – Business and Taxation Code
Article 754 Consumer’s Sales and Use Taxes**

Art. 754-1. Council findings.

Art. 754-2. Definitions.

Art. 754-3. Imposition of Consumer’s sales and service tax.

Art. 754-4. Imposition of use tax.

Art. 754-5. Calculation of tax on fractional parts of a dollar.

Art. 754-6. State and local sales and use tax bases.

Art. 754-7. Exceptions.

Art. 754-8. Local rate and boundary changes.

Art. 754-9. State-level administration.

Art. 754-10. Administrative procedures.

Art. 754-11. Criminal penalties.

Art. 754-12. Automatic updating.

Art. 754-13. Deposit of taxes collected in special revenue fund.

Art. 754-14. Effective date.

Art. 754-1. Council findings.

On October 6, 2014, the municipal home rule board approved the city's home rule plan. A part of that plan was to enact a Consumer’s sales and service tax and a use tax pursuant to W.Va. Code § 8-1-5a without the limiting restrictions in W. Va. Code § 8-13C-1 et seq.

In accordance with the home rule plan, Vienna City Council hereby finds and declares that the adoption by the city for its Consumer’s sales and service tax and use tax provisions of the Code of West Virginia, 1931, as amended, relating to imposition, administration, collection and enforcement of the state Consumer’s sales and service tax codified in W. Va. Code § 11-15-1 et seq., the

state use tax codified in W. Va. Code § 11-15A-1 et seq., and the streamlined sales and use tax act codified in W. Va. Code § 11-15B-1 et seq. will:

- (1) simplify collection of the taxes,
- (2) simplify preparation of Consumer's sales and use tax returns by taxpayers, and
- (3) improve enforcement of the city's sales and use taxes.

The council does, therefore, declare that this chapter be construed so as to accomplish the foregoing purposes.

Art. 754-2. Definitions.

(a) Terms used in this chapter or in the administration, collection and enforcement of the taxes imposed by this chapter and not otherwise defined in this chapter shall have the meanings ascribed to them in articles nine, ten, fifteen, fifteen-a and fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended.

(b) As used in this section:

- 1) **Business** includes all activities engaged in or caused to be engaged in by any person with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.
- 2) **City or this city** means the City of Vienna, West Virginia.
- 3) **Code of West Virginia** means the Code of West Virginia, 1931, as amended.
- 4) **Person** means any individual, partnership, association, corporation, limited liability company, limited liability partnership or any other legal entity, including this state or its political subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator of any person.
- 5) **Purchase** means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;
- 6) **Purchase price** means the measure subject to the taxes imposed by this chapter and has the same meaning as "sales price;"
- 7) **Purchaser** means a person who purchases tangible personal property, custom software or a service taxed by this chapter.
- 8) **Sale, sales or selling** have the meaning ascribed to those terms in article fifteen-b, chapter eleven of the Code of West Virginia.
- 9) **Sales price** has the meaning ascribed to that term in article fifteen-b, chapter eleven of the Code of West Virginia.
- 10) **Sales tax** means the tax levied under Article 754-3 of this chapter.
- 11) **Service or selected service** have the meaning ascribed to those

terms in article fifteen-b, chapter eleven of the Code of West Virginia.

- 12) **State sales tax** means the tax levied by article fifteen, chapter eleven of the Code of West Virginia.
- 13) **State use tax** means the tax levied by article fifteen-a, chapter eleven of the Code of West Virginia.
- 14) **Tax** means the taxes imposed by this chapter and includes additions to tax, interest and penalties levied under article ten, chapter eleven of the Code of West Virginia, 1931, as amended.
- 15) **Tax Commissioner or Commissioner** means the chief executive office of the tax division of the Department of Revenue of this state, as provided in W. Va. Code § 11-1-1.
- 16) **Ultimate consumer or consumer** means a person who uses or consumes services or tangible personal property or custom software.
- 17) **Use** for purposes of the tax imposed by Article 754-4 of this chapter means and includes:
 - a) The exercise by any person of any right or power over tangible personal property or custom software incident to the ownership, possession or enjoyment of the property, or by any transaction in which possession of or the exercise of any right or power over tangible personal property, custom software or the result of a taxable service is acquired for a consideration, including any lease, rental or conditional sale of tangible personal property or custom software; or
 - b) The use or enjoyment in this state of the result of a taxable service. As used in this definition, "enjoyment" includes a purchaser's right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property. The term "use" **does not** include the keeping, retaining or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the purpose of subsequently transporting it outside the city or state for use thereafter solely outside this city.
- 18) **Use tax** means the tax imposed by Article 754-4 of this chapter.
- 19) **Vendor** means any person engaged in this city in furnishing services taxed by this chapter or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this chapter.

Art. 754-3. Imposition of Consumer's sales and service tax.

- 1) For the privilege of selling tangible personal property or custom software and for the privilege of furnishing certain selected services, a vendor doing business in this city shall collect from the purchaser the taxes imposed by this Article and pay the amount of taxes collected to the tax commissioner at the same time and in the same manner as the

Consumer's sales and service tax imposed by article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended.

- 2) The rate of tax shall be **one percent of the sales price**, as defined in section two, article fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended, of the tangible personal property, custom software or taxable service purchased.

Art. 754-4. Imposition of use tax.

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

Art. 754-5. Calculation of tax on fractional parts of a dollar.

The tax computation under Article 754-3 and Article 754-4 shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than four, and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per-item basis or on an invoice basis provided the method elected is consistently used during the reporting period but the method elected shall be the same as that used for purposes of computing the state sales or use tax.

Art. 754-6. State and local sales and use tax bases.

The taxable base of the taxes imposed by Article 754-3 and 754-4 of this chapter shall be identical to the sales and use tax base of this state except as provided in Article 754-7 of this chapter, unless otherwise prohibited by federal law as required by W. Va. Code § 11-15B-34.

Art. 754-7. Exceptions.

The taxes imposed by this chapter do not apply to:

- 1) The sale or use of motor fuel, as defined in section fourteen-c, article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, upon which the tax imposed by that article is collected (11-15-14c).
- 2) The sale or use of motor vehicles upon which the tax imposed by section three-c, article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, is paid (11-15-3c).
- 3) The purchase of any exempt drugs, durable medical goods, mobility enhancing equipment and prosthetic devices, as set out in West

- Virginia Code section nine-i, article fifteen, chapter eleven (11-15-9i).
- 4) The sale or use of food and food ingredients as set out in section three-a, article fifteen, chapter eleven (11-15-3a). PROVIDED, however, commensurate with West Virginia Code section three-b, article fifteen, chapter eleven, (11-15-3b) taxes imposed by Article 754 will apply to prepared food, food sold through vending machines and soft drinks as defined in article fifteen-b, chapter eleven of the West Virginia Code and will continue to be taxed at the general rate set out in Article 754-3 or Article 754-4 as may apply.
 - 5) The purchase or use of any tangible personal property, custom software or service that the city is prohibited from being taxed under the laws of this state.
 - 6) The exceptions specifically enumerated in subdivision six, subsection-k, section five-a, article one, chapter eight (8-1-5a(k)(6)).
 - 7) Any other exception specifically set out in article fifteen, chapter eleven of the West Virginia Code.
 - 8) The tax imposed by Article 754-3 does not apply to any transaction that is exempt from the tax imposed by article fifteen, chapter eleven of the West Virginia Code.
 - 9) The tax imposed by Article 754-4 does not apply to any purchase upon which the tax imposed by Article 754-3 has been paid.

Art. 754-8. Local rate and boundary changes.

(a) The tax commissioner is required by W. Va. Code § 11-15B-35 to maintain a database for all jurisdictions levying a sales or use tax in this state. The city shall furnish the commissioner with information the commissioner requires for that database that will allow the commissioner to maintain a database that assigns each five-digit and nine-digit zip code within the city to the proper rate of tax. If any nine-digit zip code area includes an area outside this city, the single state and local rate assigned to that area in the commissioner's database will be the lowest rate applicable to that area: Provided, that, when sales occur at and are sourced to a physical location of the seller located in the city in that nine-digit zip code area, the seller shall collect the tax imposed by Article 754-3 of this chapter.

(b) Whenever boundaries of the city change, whether by annexation or de-annexation, the **Office of the Finance Director** shall promptly notify the tax commissioner in writing of the change in boundaries and provide the tax commissioner with the nine-digit zip code or codes for the area annexed or de-annexed and any other information the tax commissioner may require to maintain the database.

Art. 754-9. State Level Administration.

(a) The tax commissioner is responsible for administering, collecting and enforcing the taxes imposed by this chapter as provided in W. Va. Code § 8-13C-6 and § 11-15B-33. The city may enter into an agreement with the tax commissioner to allow employees of the city who are conducting an audit of a vendor with a physical location in the city for compliance with the city's business

and occupation tax to also audit that location for compliance with the sales and use tax laws of this state and this city, and share that information with the tax commissioner.

(b) The tax commissioner may retain from collections of the taxes imposed by this Article a fee of up to five percent (5%) of the amount of the taxes collected by the commissioner prior to the effective date of the legislative rule setting the fee pursuant to W. Va. Code § 11-10-11c. The fee retained from taxes collected on and after that date shall be the fee allowed by W. Va. Code § 11-10-11c or by any other state law or legislative rule.

(c) The tax commissioner shall deposit all the proceeds from collection of the taxes imposed by this Article, minus any fee for collecting, enforcing and administering taxes retained under Article 754-10, in the subaccount for this city established in "municipal sales and service tax and use tax fund," an interest-bearing account created in the state treasury pursuant to W. Va. Code § 8-13C-7. All moneys collected and deposited in the subaccount for the city shall be remitted at least quarterly by the state treasurer to the City Treasurer, as provided in W. Va. Code § 8-13C-7.

Art. 754-10. Administrative procedures.

Each and every provision of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven of the Code of West Virginia applies to the administration, collection and enforcement of the sales and use taxes imposed pursuant to this chapter, except as otherwise expressly provided in article thirteen-c, chapter eight of the Code of West Virginia, with like effect as if that act were applicable only to the taxes imposed by this chapter and were set forth in extenso in this chapter, as provided in W. Va. Code § 8-13C-6.

Art. 754-11. Criminal penalties.

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

Art. 754-12. Automatic updating.

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

Art. 754-13. Sales and use taxes to be deposited directly in the General Fund.

All revenues received from collection of the city's sales and use taxes, including any interest, additions to tax and penalties deposited with the city treasurer shall be treated by any person to be a general revenue of the city and shall be deposited directly in the City's general fund.

Art. 754-14. Effective date.

The ordinance from which this chapter derives shall take effect from its adoption by city council upon second reading. Upon its adoption, the city attorney shall forthwith provide the tax commissioner with a certified copy of this ordinance along with a description of the boundaries of the city, the nine-digit zip codes for addresses located within the boundaries of the city and such other information as the tax commissioner may need to administer, collect and enforce the taxes imposed by this chapter.

Notwithstanding the fact that the ordinance from which this chapter derives is effective upon its adoption, collection by vendors of the taxes imposed by this chapter and payment of those taxes by purchasers is initially suspended and shall begin and first apply to sales and purchases made on and after the first day of the calendar quarter that begins at least 60 days after the tax commissioner first notifies vendors, as provided in W. Va. Code § 11-15B-35, of the adoption of this ordinance and their obligation to collect and remit the taxes imposed by this chapter, except that both collection and payment of the tax on sales made by catalogue is initially suspended and shall first apply to sales and purchases made by catalogue on and after the first day of the calendar quarter that begins at least 120 days after vendors making catalogue sales are first notified, as provided in W. Va. Code § 11-15B-35, of the adoption of the ordinance from which this chapter derives and their obligation to collect and remit the taxes imposed by this chapter. All businesses selling tangible personal property or furnishing services subject to the tax imposed by this chapter on and after the first day of the calendar quarter on which collection begins shall, on and after that day, collect and remit the taxes imposed by this chapter whether or not they received notice from the tax commissioner under W. Va. Code § 11-15B-35. In the event that the municipal boundaries are expanded and newly annexed properties or businesses are brought into the City, the same 60 day notice applies.

Article 711-Business and Occupation Tax

**PROPOSED ORDINANCE TO REDUCE B&O TAXES
AMENDMENT of 711.02 IMPOSITION OF PRIVILEGE TAX.**

(b) Manufactured or Compounded Products. Upon every person engaging or continuing within this City in the business of manufacturing, compounding or preparing for sale, profit or commercial use, either directly or through the activity of others in whole or in part, any article or articles, substance or substances, commodity or commodities, or electric power not produced by public utilities taxable under other provisions under this article, the amount of the tax to be

equal to the value of the article, substance, commodities or electric power manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same except as hereinafter provided, multiplied by a rate of 00/100ths of one percent. The measure of this tax is the value of the entire product manufactured, compounded or prepared in this City for sale, profit or commercial use, regardless of the place of sale or the fact that the deliveries may be made to points outside the City. It is the intent of this section to eliminate the Business and Occupation Tax for Manufactured or Compounded Products as defined in this section but only for so long as the City of Vienna remains in the Home Rule Pilot Program and operates under the authority granted to it by WV Code 8-1-5a.

(c) Business of Selling Tangible Property; Sales Exempt. Upon every person engaging or continuing within this City in the business of selling any tangible property whatsoever, real or personal including the sale of food, and the services incident to the sale of food in hotels, restaurants, cafeterias, confectioneries, other public eating houses, except sales by any person engaging or continuing in the business of horticulture, agriculture or grazing, or of selling stocks, bonds or other evidences of indebtedness, there is likewise hereby levied, and shall be collected, a tax equivalent to 40/100ths of one percent of the gross income of the business, except that in the business of selling at wholesale, the tax shall be equal to 15/100ths of one percent of the gross income of the business. It is the intent of this section to reduce the Business and Occupation Tax for the "Business of Selling Tangible Property; Sales Exempt" as defined in this section but only for so long as the City of Vienna remains in the Home Rule Pilot Program and operates under the authority granted to it by WV Code 8-1-5a.

The rates of privilege tax and exemptions tax, as herein provided, shall operate and become effective for the fiscal year commencing on July 1, 2015, and shall continue for each fiscal year thereafter until otherwise amended.

Dated this _____ day of _____, 2014

Randall C. Rapp, Mayor

ATTEST:

Cathy Smith, Recorder

AMEND