AN ORDINANCE OF THE CITY OF HUNTINGTON COUNCIL CREATING A MUNICIPAL OCCUPATION TAX FOR THOSE INDIVIDUALS ENGAGED IN A BUSINESS, PROFESSION, OCCUPATION OR TRADE WITHIN THE CORPORATE LIMITS OF THE CITY OF HUNTINGTON EITHER AS AN EMPLOYEE OR AS A SELF-EMPLOYED PERSON.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HUNTINGTON, CABELL AND WAYNE COUNTIES, WEST VIRGINIA, that Article 774 of the Codified Ordinances of the City of Huntington, as revised, are hereby CREATED and ENACTED to read as follows:

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ARTICLE 774

MUNICIPAL OCCUPATION TAX

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774.01 Statement of Authority

West Virginia Code Section 8-1-5a created a pilot program known as the Municipal Home Rule Pilot Program granting five selected Class I, Class II and/or Class III municipalities and/or metro governments the authority to enact any ordinances, acts, resolutions, rules and regulations not contrary to the constitutions of the United States or West Virginia, federal law or chapters sixty-a, sixty-one and sixty-two of the West Virginia Code. On or about December 21, 2007 the City of Huntington applied to the Municipal Home Rule Board to be selected as one of the five municipalities to be authorized to have a Municipal Home Rule Pilot Program. Thereafter, the City was notified that it was selected to be one of the municipalities authorized to undertake a Municipal Home Rule Pilot Program.

West Virginia Code Section 8-1-5a provides that a pilot municipalities selected to participate in the pilot program shall have the following powers: (1) the authority to pass any ordinances, acts, resolutions, rules and regulations not contrary to the constitutions of the United States or West Virginia, federal law or chapters sixty-a, sixty-one and sixty-two of the West Virginia Code as specified in its written and approved plans: Provided, that the pilot municipalities may not adopt any ordinance, rule, regulation or resolution or take any action that would create a defined contribution employee pension or retirement plan for its employees currently covered by a defined benefit pensions plan; and (2) any other powers necessary to implement the provisions of its approved plan.

The City's Municipal Home Rule Pilot Program approved plan provides for the enactment of a municipal occupation tax on persons employed within the boundaries of the City at a tax rate of one percent (1%) of salaries, wages, commissions and other earned income for federal income tax purposes.

This Ordinance is for the purpose of raising revenue and should not be considered as regulating professions, occupations and matters of employment and to the extent it could be so interpreted should be disregarded.

774.02 Statement of Policy and Findings

(a) The City Council determines and declares that the performance of services within the City by an employee for an employer or by an individual as a self-employed person, for any period of time for compensation, is the exercise of a taxable privilege, whether or not all or only part of the services of such natural person are performed within the City.

(b) The City Council further determines and declares that considering the relationship existing between the exercise by employees and self-employed persons of the taxable privilege set forth in subsection (a) and the expenditures required by the City for street maintenance, police and fire protection and other municipal services and to provide for the general welfare, and the relationship of the exercise of the taxable privilege by employees to a proper, just and equitable distribution of the tax burdens within the City, and all matters considered in relation thereto, that the tax herein imposed on employees and self-employed persons is reasonable, proper, uniform, nondiscriminatory and necessary for a just and proper distribution of the tax burdens within the City.

(c) The City Council finds that pursuant to West Virginia Code Section 8-1-5a that the City, pursuant to the Municipal Home Rule Pilot Program, has the plenary power and authority to provide by ordinance for the enactment of a municipal occupation tax to provide revenue for the operation of its government to be collected in the manner prescribed in this Ordinance.

(d) The City Council finds that employers located within the City possess important employment information necessary to properly enforce certain aspects and provisions of this Ordinance and that, therefore, reasonable regulations concerning obtaining certain information from such employers shall be a necessary and important part of the administration of the City municipal occupation tax.

774.03 Definitions

The following words, terms and phrases when used in this Ordinance shall have the following meanings, except when the context clearly indicates a different meaning. When used herein, the singular shall include the plural and vice versa, and the masculine shall include the feminine and the neuter.

(a) ***"City"*** means the City of Huntington, West Virginia.

(b) ***"Division"*** means the Division of Finance of the City, and includes the Director of Finance.

(c) ***"Director of Finance"*** means the Director of Finance of the City, or his or her duly authorized agent.

(d) ***"Employee"*** shall mean and include any person engaging in any trade, occupation or profession within the meaning of subsection (v) of this section under the control of an employer. Any person who does any kind of work or renders any kind of personal services subject to

control by an employer both as to what work or services shall be performed and as to how they shall be performed, where the relationship between the person performing the services and the person for whom such services are rendered is, as to those services, the legal relationship of employer and employee, shall be classified as an employee under this Ordinance. In determining whether a person is an "employee" or an “independent contractor," the Director of Finance shall consider the following factors, along with other relevant factors:

(1) Whether the person receiving the benefit of the service has the right to control the manner and method of performance;

(2) Whether the person rendering the service has a substantial investment in his own tools or/and equipment;

(3) Whether the person rendering the service undertook substantial costs to perform the services;

(4) Whether the person performing the service had an opportunity for profit dependent on his managerial skill;

(5) Whether the service rendered required special training and skill;

(6) The duration of the relationship between the parties;

(7) Whether the service performed is an integral part of the recipient's business rather than an ancillary portion;

(8) Whether the person rendering the service had a risk of loss;

(9) The relationship which the parties believed they created;

(10) Whether or not the person who performed the services offered these services publicly and practiced an independent trade;

(11) Whether the custom in the trade or industry was for the service to be performed on an independent contractor or employee basis;

(12) Whether the person who received the benefit of the service had the right to discharge without cause the person who performed the services;

(13) Whether the person who performed the services had the right to delegate his duty to others; and

(14) Whether the person who performed the services had a current City business license/registration to conduct business in the City.

(e) ***"Employer"*** means and includes any person, business, firm, corporation, partnership, limited liability company, association (incorporated or otherwise), institution, trust, governmental body or unit or agency, or any other kind of organization or profession, who or that employs any person in any trade, occupation or profession in the City within the meaning of subsection (v) of this section.

(f) ***"Final Assessment"*** means the final notice of underpayment or nonpayment of the municipal occupation tax imposed by this Ordinance.

(g) ***"Gross Receipts"*** and ***"Compensation"*** shall have the same meaning, and both words shall mean Net Earnings from Self-Employment derived by a Self-Employed Person from services rendered within the City and any payment granted or given an employee unless specifically excluded, and shall include, but not be limited to, the total of the following items which a person receives from or is entitled to receive from or be given credit for by his employer for any work done or personal services rendered in any trade, occupation or profession within the City, including any kind of deductions before "Take Home" pay is received, and which are includible in gross income for Federal income tax purposes:

(1) Salaries, wages, commissions, bonuses, incentive payments, and other compensation received by an individual, whether directly or indirectly through an agent and whether in cash or in property, for services rendered:

a. As an officer, director, agent, or employee, or both, of a corporation (including a nonprofit corporation), joint stock association or joint stock company;

b. As an officer, agent or employee (as distinguished from a partner or member) of a partnership, limited partnership, limited liability company or any other form of unincorporated enterprise owned by one (1) or more persons;

c. As an agent employee (as distinguished from the proprietor) of a business, trade or profession, conducted by an individual owner;

d. As an officer, agent or employee (whether elected or appointed, enlisted or commissioned) of a governmental administration, agency, authority, board, body, branch, bureau, department, division, section or unit thereof.

e. As an officer, agent or employee of any other entity.

(2) Salaries, wages, commissions, bonuses, incentive payments, and other compensation received by an individual, whether directly or indirectly through an agent and whether in cash or in property, for services rendered:

a. Whether based upon hourly, daily, weekly, semimonthly, monthly, annual, unit of production of piece-work rates; and

b. Whether paid by an individual, partnership, association, limited liability company, corporation (including a nonprofit corporation), governmental administration, agency, authority, board, body, branch, bureau, department, division, section or unit, or any other entity.

(3) Commissions received by an employee, whether directly or indirectly through an agent, and whether in cash or in property, for services rendered, regardless of how computed or by whom paid.

(4) Fees and other earned income. Compensation paid to a director or officer of a corporation are subject to withholding under this Ordinance as in the case of any other employee.

(5) Other compensation will be treated as follows:

a. SUBJECT TO THE OCCUPATION TAX:

(i) Tips Received by Waiters and Others: Tips received are subject to the occupation tax and will be reported in the same manner as regular earnings.

(ii) Vacation, Holiday and/or Sick Benefits: Payments made to employees by an employer as vacation, holiday and/or sick payments are subject to the occupation tax.

(iii) Separation Payments: Payments made to employees by an employer at the time of a voluntary or involuntary separation (dismissal) of the employee from the service of the employer, are to be regarded as subject to the occupation tax.

(iv) Employee contributions to any welfare benefit, fringe or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code are subject to the occupation tax.

(v) Property and Services Received as Compensation: The fair market value of property or services received as compensation by an employee and paid by the employer including board and lodging and similar items where such board and lodging is considered part of the compensation paid and is not afforded for the convenience of the employer.

(vi) Other Income: All other income paid by an employer and received by an employee for the performance of any activity subject to the occupation tax, not expressly exempt (see below) is subject to the occupation tax.

b. NOT SUBJECT TO THE OCCUPATION TAX:

(i) Retirement Payments: Periodic payments commonly recognized as old-age or retirement pensions, made to persons retired from services after reaching a specified age or after a stated period of employment, are not subject to the occupation tax.

(ii) Disability and Unemployment Compensation: Payments made to employees by an employer under a disability, or accident plan are not subject to the occupation tax. Unemployment compensation payments by any state or any other agency are not subject to the occupation tax.

(iii) Death Benefits: Death benefits payable by an employer to the beneficiary of an employee or to the employee's estate, whether payable in a single sum or otherwise, are not subject to the occupation tax.

(iv) Benefits arising under state or federal workers' compensation laws: Amounts received by employees under state or federal workers compensation laws as compensation for a disability sustained during the course of employment, together with any amount of damages received by suit or agreement on account of such disability, are not subject to the occupation tax.

(v) Allowances and Reimbursements for Expenses: Reasonable sums allowed and paid by employers to employees for expenses necessarily and actually incurred by the employee in the direct performance of his services are not subject to the occupation tax..

(vi) Strike Benefits: Strike pay benefits paid from a fund which is established and/or replenished, in whole or in part, from the employee's wages are not subject to the occupation tax.

(vii) West Virginia National Guard: Compensation paid members of the West Virginia National Guard for active duty training, unit training assemblies and annual field training.

(viii) Employer contributions to qualified retirement plans not arising from employee elections are not subject to the occupation tax.

(ix) Employer Payments for Employee Benefits: Employer's payments for employee's life insurance premiums not treated as wages for federal income tax purposes, employer's payments for employee's health insurance benefits are not subject to the occupation tax.

(x) Student Grants: Stipends, honorariums, grants and other payments made to students to the extent that such payments are conditioned only upon the recipient's pursuit of studies and/or participation in athletic or other intercollegiate competition, and scholarships and other noncash fringe benefits received by duly registered students from the school, college or university in which they are enrolled are not subject to the occupation tax.

(xi) Payments to Nonresident Military Personnel: Payments to nonresident military personnel exempt from state and location taxation under the Soldiers and Sailors Federal Relief Act (USCA 574) are not subject to the occupation tax.

(xii) Compensation to individual domestic workers or care providers are not subject to the occupation tax.

(xiii) Compensation to individuals with single newspaper routes are not subject to the occupation tax.

(xiv) Employee contributions to any retirement, profit sharing or deferred compensation plan, which are deferred for federal income tax purposed under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h) or 457 of the Internal Revenue Code and retirement plans of state, local and federal governmental entities are not subject to the occupation tax.

(h) ***"Independent Contractor"*** shall mean a person who is subject to the control and direction of another as to the result of his work, but not as to means or methods.

(i) ***"Internal Revenue Code"*** means the Internal Revenue Code of 1986, as amended.

(j) ***"Net Earnings from Self-Employment"*** means with respect to any individual the individual's "net earnings from self-employment" as determined pursuant to Section 1402 of the Internal Revenue Code and which is attributable to services performed within the City.

(k) ***"Notice of Appeal"*** means any written notice sufficient to identify the name of the taxpayer or other party appealing, the specific matter appealed from, the basis for that appeal, and the relief sought.

(l)***"Person"*** means any natural person.

(m)***"Petition for Refund"*** means a written request for a refund of tax previously paid, including in the form of an amended return. Unless otherwise provided by law, such request shall include sufficient information to identify the amount of tax overpaid, the taxpayer, the period included, the reasons for the refund and sufficient documentation as required by the Director of Finance.

(n)***"Petition for Review"*** means a written document filed with the Division in response to a preliminary assessment in which the taxpayer sets forth reasonably specific objections to the preliminary assessment.

(o)***"Preliminary Assessment"*** means the preliminary notice of underpayment of the occupation tax by a taxpayer.

(p) ***"Reasonable Cause"*** shall include, but not be limited to, those instances in which the taxpayer has acted in good faith. The burden of proving reasonable cause shall be on the taxpayer.

(q)***"Return"*** means any report, document, or other statement required to be filed with the Division for the purpose of paying, reporting, or determining the proper amount of value or tax due.

(r) ***"Self-Employed Person"*** means an individual who has Net Earnings from Self-Employment from services performed within the City.

(s)***"Tax"*** means any amount, including applicable penalty and interest, levied or assessed against a taxpayer and which the Division is required or authorized to administer under the provisions of this Ordinance.

(t)***"Taxpayer"*** means any person subject to or liable for taxes herein levied; any person required to file a return with respect to, or to pay, or withhold and remit the tax herein levied or to report any information or value to the Division; or its designee.

(u)***"Taxpayer's Authorized Representative"*** means any individual with written authority or power of attorney to represent a taxpayer before the Division; provided however, that nothing herein shall be construed as entitling any such individual who is not a licensed attorney to engage in the practice of law.

(v)***"Trade, Occupation, and Profession"*** means and includes the doing of any kind of work, the rendering of any kind of personal services either as an employee or a Self-Employed Person, or the holding of any kind of position or job within the City, by any clerk, laborer, tradesman, manager, official, professional or other employee or the providing of any services by a Self-Employed Person, including any non-resident of the City who is a Self-Employed Person or or any non-resident employed by any employer as defined in this section, where the relationship between the individual performing the services and the person for whom such services are rendered is, as to those services, the legal relationship of employer and employee, including also a partner of a firm or an officer of a firm or corporation, if such partner or officer receives a salary for his personal services rendered in the business of such firm or corporation. "Trade, Occupation, and Profession" shall also mean and include the holding of any kind of office or position, either by election or appointment, by any federal, state, county or city officer or employee where the services of such official or employee are rendered within the City.

774.04 Imposition of Tax

A municipal occupation tax is hereby imposed upon any person who engages in any trade, occupation or profession within the City when the relationship between the individual performing the services and the person for whom such services are rendered is the legal relationship of employer and employee or where the person is a Self-Employed Person. This includes both residents and nonresidents of the City, an officer or partner of a corporation or firm if such officer or partner receives a salary for his personal services rendered in the business of such corporation or firm, and governmental employees performing services within the City. The municipal occupation tax shall be measured by and shall be equal to one percent (1.0%) of the gross receipts of such person which are earned by such person for work done or services rendered in the City regardless of where the payment is made or received. **In no event shall such liability exceed $1,250.00 for any calendar year.**

774.05 Filing of Returns; Annual Filing of Reconciliation of Returns; Payment of the Tax; Bulk Submissions.

(a) Employers to Withhold Occupation Tax and File Returns; Due Date of Tax. Each employer shall deduct from each payment of gross receipts and compensation due each employee the amount of the occupation tax measured by one percent (1%) of the compensation due each employee beginning on the 1st day of October, 2010. The payments required to be made on account of such deductions by employers shall be made monthly to the City on or before the twentieth (20th) day of the month next following the end of each such monthly period (i.e., the initial payments to the City shall be due on November 20, 2010 for any gross receipts and compensation paid to employees for the time period from October 1, 2010 to October 31, 2010.) Each payment of occupation tax shall be accompanied with a return on the form prescribed by the Division. Notwithstanding the foregoing, employers may, with the consent of the Division, file returns more frequently than monthly.

(1) Quarterly Returns Permitted for Certain Small Businesses. If the total amount of occupation tax due from all employees of an employer averages less than fifty ($50.00) dollars per month during the preceding calendar year, a quarterly return and remittance in lieu of monthly returns may be made for the current calendar year. If an employer qualifies for this exception, the employer must make an election, submitted to the Division, to file quarterly returns prior to January 31st of the current calendar year. If such election is properly made, the return, and the remittance of occupation tax to the City for the quarterly periods shall be due on or before the twentieth (20th) day of the month next following the end of each such calendar quarterly period. For calendar year 2010 employers may seek the consent of the Director of Finance to file on a quarterly basis.

(b) Contents of Returns. Each monthly or quarterly return shall show:

(1) The number of employees, both taxable and nontaxable, of the employer;
(2) The amount of gross compensation of all employees;
(3) Nontaxable compensation;
(4) The amount of occupation tax deducted and paid by such employer for all or any part of the period being reported;
(5) The correct reporting period; and
(6) In addition to items (1) through (5) above, such return shall show such other pertinent information as may be required by the Division.

(c) Employer's Responsibility When No Form Received. The Division is authorized to provide prescribed forms necessary for compliance with the filing requirement outlined in this section. The failure of an employer to receive forms from the Division does not relieve the employer or the taxpayer of the responsibility of the timely reporting of the information required on the return, nor the timely payment of the tax.

(d) Employers Deemed to be Trustees. Each employer is deemed to be a trustee of the City in collecting and holding the occupation tax required under this Ordinance to be withheld and submitted to the City, and the funds so collected by such withholding are deemed to be trust funds. Every such employer required to deduct and withhold the occupation tax at the source is

liable directly to the City for the payment of such tax whether actually collected by the employer or not.

(e) Failure or Omission by Employer--Employee's Responsibility. The failure of any employer to collect occupation tax and to make such return shall not relieve the employee from payment of such occupation tax in compliance with this Ordinance respecting the making of returns and payment of the occupation tax.

(f) Returns to be Filed by Employees or Self-Employed Persons; Due Date of Tax. When a monthly or quarterly return, as required hereby is not filed by an employer and the occupation tax is not paid to the City by such employer as herein provided or in the case of tax due from a Self-Employed Person, the employee for whom no return has been filed and no payment has been made or the Self-Employed Person shall file a return with the Director of Finance on or before the twentieth (20th) day of the month next following the end of each such monthly or quarterly period, showing in said return his gross receipts subject to occupation taxes for such month or quarter. If for any reason all occupation taxes of a person subject to the provisions of this Ordinance were not withheld by his employer from his gross receipts, such person shall file each return required by this section on a form obtainable from the Director of Finance. In addition to the gross receipts earned by him, such return shall show such other pertinent information as may be required by the Director of Finance. Each person making a return required by this section shall, at the time of filing thereof, pay to the City the amount of occupation taxes due under this Ordinance; provided, however, that any portion of the occupation tax deducted by the employer shall be deducted on the return and only the balance, if any, shall be due and payable by the employee at the time of filing said return.

774.06 Annual Filing of Reconciliation Returns

(a) Each employer or Self-Employed Person shall file with the Division on or before February 28th of each year, an annual return regarding the previous calendar year on a form prescribed by the Division. This annual return shall show the gross amount of compensation of each employee or Self-Employed Person for the previous calendar year, the amount of occupation taxes deducted and paid by such employer or Self-Employed Person for the preceding calendar year and other information as may be prescribed on such annual return form.

(b) Each employee for which no return was filed by the employer, shall file a return with the Division on or before February 28th of each year thereafter in which his employer has failed to file any monthly or quarterly return required in the preceding calendar year, showing on said return the gross receipts subject to occupation taxes during the preceding calendar year. If for any reason all occupational taxes of a person subject to the provisions of this Ordinance were not withheld by his employer from his gross receipts, such person shall file each return required by this Section on a form obtainable in the Division.

(c) Each employer shall file with the Division on or before February 28th of each year, a copy of all Internal Revenue Service Forms 1099 or a report showing the amount of compensation earned by any person not considered an employee, as defined in this Ordinance, who has rendered personal services for which the occupational tax was not withheld by the taxpayer receiving the personal services during the preceding calendar year. Each Self-Employed Person shall file

with the Division on or before April 15th of each year, a copy of all Internal Revenue Service Form 1065 - K-1s or Form 1040 - Schedule Cs, as applicable, showing such Self-Employed Person's Net Earnings from Self-Employment with any adjusting schedules detailing the portion of such person's Net Earnings from Self-Employment which is attributable to services performed within the City.

774.07 Timely Mailing Treated as Timely Filing and Paying

The provisions outlined in this section for the timely filing of any returns, payments, claims, statements, or other documents shall be administered as provided herein.

(a) Date of Delivery by Use of United States Mail. If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under the authority of any provision of this Ordinance is, after such period or such date, delivered by United States mail to the Division or to the Division's designated depository where such return, claim, statement, or other document is required to be filed, or to which such payment is required to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery, or the date of payment, as the case may be; provided, however:

> **(1) Weekends and Holidays.** When the due date falls on a Saturday, Sunday, or City holiday, payment of the tax may be made without penalty on the first business day following the due date.
>
> **(2) Mailing Requirements.** The return, claim, statement, or other document, or payment was, within the time prescribed in subsection (a) above, deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the Division or to the Division's designated depository where such return, claim, statement, or other document is required to be filed, or to where such payment is required to be made.

(b) Date of Delivery by Method Other Than United States Mail. Returns, claims, statements, or other documents, or payments which are required under any provision of this Ordinance which are delivered by any method other than by United States mail shall be considered timely filed when such items are received by the Division or the Division's designated depository on or before the due date prescribed.

(c) Untimely Filing. Any return, payment, claim, statement, or other document not received in accordance with the provisions of this section shall be deemed untimely filed and shall be assessed applicable penalties and interest as prescribed by this Ordinance.

774.08 Bulk Submissions

The Division may accept, for reporting and payment of the occupation tax, bulk submissions of returns. Any such bulk submissions of reports and payments shall include:

1. The City's assigned taxpayer identification number for each such taxpayer for each tax paid; and,

2. Sufficiently detailed information by which each taxpayer can be identified such that a determination can be made as to the amount and method of assessment of tax against such taxpayer for the City.

The acceptance by the City of such bulk submissions shall not relieve the taxpayer on whose behalf such submissions were made from liability for any occupational tax arising from an error or omission made by the taxpayer's representative. Such bulk submission shall be signed by the taxpayer or its properly authorized representative.

774.09 Extension of Time for Making Return

The Director of Finance, at his discretion, for reasonable cause, may extend the time for making any return required under the provisions of this Ordinance, however, the time for filing any such return shall not be extended for a period greater than thirty (30) days from the date such return is due to be made and shall not prevent penalty and interest from accruing during the period of such extension.

A. Where Work Done or Services Performed Both Within and Without the City

(a)Tax as a Percentage of Work Performed Within the City. In cases where compensation is earned as a result of work done or services performed both within and without the City, the occupation taxes required under this Ordinance shall be computed by determining upon the oath of the employer or Self-Employed Person, or if required by the Director of Finance upon the oath of the employee, that percentage of the compensation earned from the proportion of the work which was done or performed within the City.

(b) Tax on Commission-Based Income. If an individual is a traveling salesperson, agent or other employee, whose compensation on the basis of commission depends directly on the volume of business transacted by the individual, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the city bears to the volume of business transacted by the employee both within and without the city. There shall be no proration of compensation for employees headquartered within the City where travel is only incidentally connected with the occupation.

(c) Unusual Cases. If it is impossible to apportion the earnings as provided above because of the peculiar nature of the services of the employee, or of the usual basis of compensation, apportionment shall be made in accordance with facts, and the tax deducted and withheld accordingly. With respect to each such employee or group of employees similarly or identically circumstanced, the employer shall furnish the Finance Director a detailed statement of facts.

(d) Occasional Entry Within City. The occasional entry into the city of an employee, who performs duties for which the employee is employed entirely outside the city, but enters the city for the purposes of reporting, receiving instructions, accounting, etc., incidental to the employee's duties outside the city shall not be deemed to take such employee out of the class of those rendering their services entirely outside the city.

774.11 Maintenance of Records; Investigative Powers; Audit and Subpoena Authority

The provisions of this section shall be administered in accordance with the procedures set forth herein.

(a) Records to be Kept. It shall be the duty of every employer employing employees and every Self-Employed Person subject to the occupation tax imposed by this Ordinance to keep and preserve suitable records of the gross receipts and compensation earned of such employees and such other books or accounts as may be necessary to allow the Division to determine the correct amount of tax for which he is liable, or other records or information as may be necessary for the proper administration of any matters, under the provisions of this Ordinance. It shall also be the duty of every person to keep and preserve, for a period of not less than five (5) years from the due date of the return on which the underlying tax is required to be reported, or five (5) years of the date the return is filed, whichever is

later, all such payroll journals or registers, canceled checks, expense reports or otherwise, and all such payroll journals or registers, canceled checks, expense reports and other records. All such records described in this paragraph shall be open for examination by the Division, upon request, at a reasonable time and location.

(1) Reasonable Time and Reasonable Location. *"Reasonable time"* shall be considered to be during normal business hours of the Division. *"Reasonable location"* shall be considered to be the taxpayer's place of business or the offices of the taxpayer's authorized representative, provided such business or representative is located within a fifty (50) mile radius of the City. Taxpayers maintaining records outside of this radius must make records available at City Hall or at such other location as agreed upon by the Division. The Division, when conducting an audit, review, or examination for verification, may, at its election, require any taxpayer conducting business within the City to provide records, accounts, books, papers and other documents at a reasonable time and reasonable place agreed upon by the Division, as provided herein.

(2) Employer May Be Assessed Reasonable Costs. The Division may assess and collect from employers the reasonable costs, based on the then current City government employee per diem rates incurred by, or charged to, the City in connection with performing an examination of the employer's books and records if the employer or Self-Employed Person received notice by certified U.S. mail, return receipt requested, at least thirty (30) days prior to the date on which the examination was to commence, and

1. The employer or Self-Employed Person either failed or refused to respond or did not propose a reasonable alternative date on which the examination was to commence within 15 days of receipt of notice of the pending examination, or if

2. The employer or Self-Employed Person and the Division agreed in writing as to an alternative date on which the examination was to commence but the taxpayer then failed or refused to permit reasonable access to its books and records on the alternative date.

(b) Investigative Powers. Each taxpayer shall give to the Division the means, facilities and opportunity for the making of such audit, examination and investigation of the records, books, or other relevant information maintained by any taxpayer or other person for the purpose of computing and determining the correct amount of tax as provided for in subsection 774.04 of this Ordinance. The Director of Finance is hereby authorized to examine any person under oath concerning any gross receipts and compensation which were or should have been shown in a return, and to this end, he may compel the production of books, papers, records and the attendance of all persons before him, whether as parties or as witnesses, whom he believes to have knowledge of such gross receipts and compensation.

(c) Audit and Subpoena Authority; Additional Requirements. The Division is authorized to audit, to subpoena records, and to enter into contracts with private examining or collecting firms as provided herein.

(1) The Director of Finance or any agent or employee authorized by him is hereby authorized to examine and audit the books, papers, records, or other information of any taxpayer in order to determine the accuracy of any return made, or if no return was made, to ascertain the amount of occupation taxes due under the terms of this Ordinance by such audit or examination. In addition to any audits that may be conducted at the direction of the Director of Finance, audits of no less than five percent (5%) of the total occupation tax accounts shall be conducted on an annual basis to ensure compliance with the ordinance.

(2) The Division may summon any witness to appear and give testimony, and summon by subpoena duces tecum any records, books, or other information of any kind relating to any matter which the Division has authority to administer. The witness may be summoned by subpoena issued by any circuit judge, any magistrate, or any City judge, in the name of the Division, directed to any sheriff in the State of West Virginia and returnable to the Division. The subpoena may be served in like manner as subpoenas issued out of any circuit court, or the subpoena may be served by an authorized employee of the Division or by certified mail, return receipt requested. If any witness has been subpoenaed to appear and testify or appear and produce records, books, or other information, and fails or refuses to appear or testify or to produce the books, records, or other information, that witness shall be subject to contempt proceedings in the circuit court.

(3) The Division is authorized to enter into contracts with private examining or collecting firms.

774.12 **Refunds**

(a) Petitions for Refund.

(1) Any taxpayer may file a petition for refund with the Division for any overpayment of tax erroneously paid to the Division. If a final assessment for the tax has been entered by the Division, a petition for refund of all or a portion of the tax may be filed only if the final assessment plus applicable interest has been paid in full prior to or with the filing of the petition for refund.

(2) The petition for refund must be filed in writing by the employer who collected and remitted the tax to the Division or by an employee or Self-Employed Person who paid the tax or on whose behalf the tax was paid. All petitions for refunds must be in writing.

(3) All petitions for refund shall include sufficient information to identify the amount of tax overpaid, the taxpayer, the period included, and the reasons for the refund. Such petition shall be accompanied with sufficient supporting documentation as the Division may deem necessary and proper.

(b) Automatic Refund. Where the Division determines that a taxpayer is entitled to a refund on the annual return properly submitted, the Division shall automatically refund to that taxpayer the amount of any excess tax so paid to the City; provided, however, that the time limitation provisions of this Ordinance shall apply.

(c) Time Limitations.

(1) A petition for refund must be filed in writing with the Division within (i) three (3) years after the due date of the return in respect of which the tax was imposed, determined by including any authorized extension of time for filing the return, or within two (2) years from the date the tax was paid, whichever of the periods expires the later, or if no return was filed by the taxpayer, within two (2) years from the date of payment of the tax, and not thereafter.

(2) The Division shall either grant or deny a petition for refund within six (6) months from the date the petition is filed, unless the period is extended by written agreement of the taxpayer and the Division. The taxpayer shall be notified of the Division's decision concerning the petition for refund by first class United States mail, or by certified mail, with return receipt requested, sent to the taxpayer's last known address. If the Division is unable to grant a refund within the time provided herein due to the taxpayer's failure to provide adequate information, the petition for refund shall be deemed to be denied.

(3) The Division and the taxpayer may, prior to the expiration of the period for the filing of a petition for refund, agree in writing to extend the time provided for filing the petition. The petition for refund may be filed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

774.13 Preliminary and Final Assessments

All preliminary and final assessments issued by the Division shall be executed as provided herein. The terms "preliminary assessment" and "final assessment" shall have the respective meanings as ascribed by Article 774.03, "Definitions" of this Ordinance.

(a) Entry of Preliminary Assessment. If the Division determines that the amount of any tax as reported on a return is incorrect, or if no return is filed, or if the Division is required to determine the amount of tax owed, the Division may calculate the correct tax based on the most accurate and complete information reasonably obtainable by the

Division. The Division may thereafter enter a preliminary assessment for the correct tax, including any applicable penalty and interest.

(b) Service of Preliminary Assessment Upon Taxpayer. The preliminary assessment entered by the Division, or a copy thereof, shall be promptly mailed by the Division to the taxpayer's last known address by either first class U.S. mail or certified mail with return receipt requested, but at the option of the Division, the preliminary assessment may be delivered to the taxpayer by personal delivery.

(1) Disputed Preliminary Assessments. If a taxpayer disagrees with a preliminary assessment as entered by the Division, the taxpayer may file a written petition for review with the Division within sixty (60) calendar days from the date of entry of the preliminary assessment, setting out the specific objections to the preliminary assessment and showing cause why such assessment should not be made final. If a petition for review is timely filed, or if the Division otherwise deems it necessary, the Division shall schedule a conference with the taxpayer for the purpose of allowing the taxpayer and the Division to present their respective positions, discuss any omissions or errors, and to attempt to agree upon any changes or modifications to their respective positions.

(2) If a written petition for appeal/review:

i. Is not timely filed, or

ii. Is properly filed, and upon further review the Division determines the preliminary assessment is due to be upheld in whole or in part, the Division may make the assessment final in the amount of tax due as computed by the Division, with applicable interest and penalty computed to the date of entry of the final assessment.

(c) Service of Final Assessment Upon Taxpayer. The final assessment entered by the Division, or a copy thereof, shall be mailed by the Division to the taxpayer's last known address (i) by either first class U.S. mail or certified mail with return receipt requested in the case of assessments of tax of five hundred dollars ($500) or less or (ii) by certified mail with return receipt requested in the case of assessments of tax of more than five hundred dollars ($500). In either case and at the option of the Division, the final assessment, or a copy thereof, may be delivered to the taxpayer by personal delivery.

(d) Undisputed Preliminary Assessments. Where the amount of tax reported on a return is undisputed by the Division, or the taxpayer consents in writing to the Division's determination of the amount of any deficiency or preliminary assessment as provided by this Ordinance, the Division may immediately enter a final assessment for the amount of the tax, plus applicable penalty and interest.

774.14 Time Limitation for Entering Assessments

(a) Any preliminary assessment must be entered within three (3) years from the due date of the return, or three (3) years from the date the return is filed with the Division, whichever is later. A preliminary assessment may be entered at any time if no return is filed as required, or if a false or fraudulent return is filed with the intent to evade tax. Additionally, a preliminary assessment may be entered within six (6) years from the due date of the return or six (6) years from the date the return is filed with the Division, whichever is later, if the taxpayer omits from the taxable base an amount properly includable therein which is in excess of twenty five percent (25%) of the amount of the taxable base stated in the return.

For purposes of this paragraph:

(A) The term "taxable base" means the gross receipts and compensation or other amounts on which the tax paid with the return is computed; and

(B) In determining the amount omitted from the taxable base, there shall not be taken into account any amount which is omitted from the taxable base stated in the return if the amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Division of the nature and amount of the item.

(b) The Division and the taxpayer may, prior to the expiration of the period for entering a preliminary assessment, agree in writing to extend the time provided for entering the assessment. The tax may be assessed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) Additional tax may be assessed by the Division within any applicable period allowed above, even though a preliminary or final assessment has been previously entered by the Division against the same taxpayer for the same or a portion of the same tax period.

774.15 **Appeals**

Appeals from denial of refunds and final assessments shall be executed as provided for in this section.

(a) If aggrieved by a decision of the Director with respect to a claim for refund or a final assessment, a taxpayer may appeal the decision of the Director to either the Circuit Court of Cabell County or Wayne County, depending upon the taxpayer’s location within the City, within 60 days after service of the Director's decision.

(1) The appeal shall be taken by the filing of a petition and notice, which petition and notice shall be served upon or accepted by the Director as an original notice. When the petition and notice is so served it shall, with the return or acceptance thereon, be filed in the Office of the Clerk of the Cabell County Circuit Court or the Office of the Clerk of the Wayne County Circuit Court, as applicable, and docketed as other cases, with the aggrieved party as plaintiff and the Director as defendant.

(2) The filing of the appeal shall not stay the collection of the occupation tax unless the plaintiff shall file with such clerk a bond for the use of the defendant, with sureties approved by the Clerk of the Circuit Court of Cabell County or the Office of the Clerk of the Wayne County Circuit Court, as applicable, the penalty of the bond to be not less than the total amount of the tax, and accumulated interest and penalties to the date of the appeal, and conditioned that the plaintiff shall perform the orders of the Cabell County Circuit Court or the Wayne County Circuit Court, as applicable; provided, that the judge of the Cabell County Circuit Court or the Wayne County Circuit Court, as applicable, may stay the collection of the tax and accumulated interest and penalties without the requirement of a bond, upon a proper showing by the plaintiff that the properties of the plaintiff are sufficient to secure performance of the Cabell County Circuit Court's or the Wayne County Circuit Court's, as applicable, orders or that the ends of justice will be served thereby.

(3) The Cabell County Circuit Court or the Wayne County Circuit Court, as applicable, shall hear the appeal and determine anew all questions submitted to it on appeal from the decision of the Director. In such appeal a certified copy of the Final Assessment approved by the Director or the Director's decision with respect to a refund claim shall be admissible and shall constitute prima facie evidence of the tax, interest and penalties due under the provisions of this Ordinance.

(b) The administrative remedies set forth in this Ordinance are exclusive. Failure to timely file a refund claim in accordance with this Ordinance shall preclude any right to refund with respect to any tax paid to the City prior to the claim. If no appeal is taken pursuant to this section within sixty (60) days after service of the Director's decision, said decision shall become final and conclusive and not subject to administrative or judicial review. The amount of the tax and accumulated interest and penalties, if any, due the City under such decision shall be due and payable on the day following the date upon which such decision becomes final.

774.16 Penalties and Interest

(a) Failure to Timely File Return. If a taxpayer fails, neglects, or refuses to file any return required to be filed with the Division on or before the date prescribed therefor, determined with regard to any extension of time for filing granted by the Director of Finance, there shall be assessed, in addition to the tax due or the amount of tax herein required to be withheld/remitted, a penalty of five percent (5%) of the amount due or fifty dollars ($50.00), whichever is greater, if the failure is for more than one (1) month with an additional five percent (5%) or fifty dollars ($50.00), whichever is greater, for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent (25%) or $250 in the aggregate, whichever is greater. Such penalty shall be assessed and collected as part of the tax.

(b) Underpayment of Tax. Any taxpayer failing to pay the tax herein levied to the City or any amount of tax herein required to be withheld and remitted to the City, within the time required by this Ordinance shall pay, in addition to the tax or the amount of tax herein required to be withheld and remitted, a penalty of five percent (5%) of the amount due or fifty dollars ($50.00), whichever is greater, if the failure is for more than one (1) month with an additional five percent (5%) or fifty dollars ($50.00), whichever is greater, for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent (25%) or $250 in the aggregate, whichever is greater. Such penalty shall be assessed and collected as part of the tax.

(c) Underpayment Due to Negligence. If any part of any underpayment of tax is due to negligence or disregard of rules or regulations, there shall be added to the tax an amount equal to ten percent (10%) of that part of the tax attributable to negligence or disregard of rules or regulations. For the purpose of this section, the term *"negligence"* includes any failure to make a reasonable attempt to comply with this Ordinance, and the term *"disregard"* includes any careless, reckless or intentional disregard. Provided, however, that the minimum penalty imposed against such person or employer shall be five dollars ($5.00).

(d) Underpayment Due to Fraud. In the case of the filing of any false or fraudulent return with intent to evade the occupation tax imposed by this Ordinance, or in the case of willful failure to file a return with intent to evade tax, there shall be added to the tax due an amount equal to fifty percent (50%) thereof. The burden of proving fraud, willfulness or intent to evade tax shall be upon the Finance Director.

(e) Frivolous Appeal Penalty. If any appeal to the Director of Finance or Circuit Court is determined to be frivolous or primarily for the purpose of delay or to impede collection of the tax imposed by this Ordinance, a penalty of two hundred fifty dollars ($250.00) or twenty-five percent (25%) of the tax in question, whichever is greater, shall be assessed in addition to any tax due.

(f) Penalties Not Exclusive. The penalties provided in this section for failure to timely file a return, failure to timely pay tax, underpayment of tax, underpayment due to

negligence and fraud, or filing a frivolous appeal, may be asserted against the same taxpayer for the same tax period.

(g) Waiver of Penalties. Penalties may be waived, in whole or in part, by the Director of Finance upon a determination of reasonable cause. The burden of proving reasonable cause shall be on the taxpayer.

(h) Penalty and Interest Assessed as Tax. All penalties and interest levied or assessed against a taxpayer and which are administered by the Division shall be assessed and collected in the same manner as taxes.

(i) Interest. Interest shall be computed at a rate of one percent (1%) per month or fraction thereof, and shall be added as provided herein to any tax or other amount due the Division which is not paid by the due date. Interest on any delinquency or underpayment shall be charged from the due date of the tax.

(j) Abatement of Penalty. The Division shall abate any penalty attributable to erroneous written advice furnished to a taxpayer by an employee of the Division. However, this subsection shall apply only if the Division employee provided the written advice in good faith while acting in his official capacity, the written advice was reasonably relied on by the taxpayer and was in response to a specific written request of the taxpayer, and the penalty did not result from the taxpayer's failure to provide adequate or accurate information.

(k) Penalty for Failure to Perform Duties. Any person required to collect, withhold, truthfully account for, and/or pay over any tax imposed by this Ordinance who willfully fails to collect or withhold such tax, or truthfully account for, and/or pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall in addition to the tax due and other penalties provided by law, be liable for a penalty up to the total amount of the tax evaded, or not collected, or not account for and paid over.

774.17 Confidentiality of Tax Returns

(a) General rule. -- Except when required in an official investigation by the Director of Finance into the amount of occupation tax due under this Ordinance or in any proceeding in which the Director of Finance is a party before a court of competent jurisdiction to collect or ascertain the amount of such tax and except as provided in subsections (c) through (f), inclusive, of this section, it shall be unlawful for any officer, employee or agent of the City to divulge or make known in any manner the tax return, or any part thereof, of any person or disclose information concerning the personal affairs of any individual or the business of any single firm or corporation, or disclose the amount of income, or any particulars set forth or disclosed in any report, declaration or return required to be filed with the Director of Finance by this Ordinance or by any rule or regulation of the Director of Finance issued thereunder, or disclosed in any audit or investigation conducted under this Ordinance.

(b) Definitions. -- For purposes of this section:

(1) Disclosure. -- The term "disclosure" means making known to any person in any manner whatsoever a return or return information.

(2) Inspection. -- The terms "inspection" and "inspected" means any examination of a return or return information.

(3) Return. -- The term "return" means any tax or information return or report, declaration of estimated tax, claim or petition for refund or credit or petition for reassessment that is required by, or provided for, or permitted under the provisions of this Ordinance which is filed with the Director of Finance by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments or lists which are supplemental to, or part of, the return so filed.

(4) Return information. -- The term "return information" means a taxpayer's identity; the nature, source or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to or collected by the Director of Finance with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) or by any person under the provisions of this Ordinance for any tax, additions to tax, penalty, interest, fine, forfeiture or other imposition or offense.

(5) Tax administration. -- The term "tax administration" means:

(A) The administration, management, conduct, direction and supervision of the execution and application of the this Ordinance; and

(B) Includes assessment, collection, enforcement, litigation, publication and statistical gathering functions under the laws of the City.

(6) Taxpayer identity. -- The term "taxpayer identity" means the name of a person with respect to whom a return is filed, his or her mailing address, his or her taxpayer identifying number or a combination thereof.

(7) Taxpayer return information. -- The term "taxpayer return information" means return information as defined in subdivision (4) of this subsection which is filed with, or furnished to, the Director of Finance by or on behalf of the taxpayer to whom such return information relates.

(c) Disclosure to designee of taxpayer. -- Any person protected by the provisions of this section may, in writing, waive the secrecy provisions of this section for such purpose and such period as he or she shall therein state. The Director of Finance may, subject to such requirements and conditions as he or she may prescribe, thereupon release to designated recipients such taxpayer's return or other particulars filed under the provisions of this Ordinance, but only to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the Director of Finance determines that such disclosure would seriously impair administration of this Ordinance.

(d) Disclosure of returns and return information for use in criminal investigations. -

(1) In general. -- Any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a federal district court judge, federal magistrate or circuit court judge of West Virginia, under subdivision (2) of this subsection, be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any federal agency, or of any agency of West Virginia, who personally and directly engaged in:

(A) Preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated state or federal criminal statute to which West Virginia, the United States or such agency is or may be a party;

(B) Any investigation which may result in such a proceeding; or

(C) Any state or federal grand jury proceeding pertaining to enforcement of such a criminal statute to which West Virginia, the United States or such agency is or may be a party. Such inspection or disclosure shall be solely for the use of such officers and employees in such preparation, investigation or grand jury proceeding.

(2) Application of order. -- Any United States attorney, any special prosecutor appointed under Section 593 of Title 28, United States Code, or any attorney in charge of a United States justice department criminal division organized crime strike force established pursuant to Section 510 of Title 28, United States Code, may authorize an application to a circuit court judge or magistrate, as appropriate, for the order referred to in subdivision (1) of this subsection. Any prosecuting attorney of West Virginia may authorize an application to a circuit court judge of West Virginia for the order referred to in said subdivision. Upon the application, the judge or magistrate may grant such order if he or she determines on the basis of the facts submitted by the applicant that:

(A) There is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;

(B) There is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act; and

(C) The return or return information is sought exclusively for use in a state or federal criminal investigation or proceeding concerning such act and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

(e) Statistical use. -- This section shall not be construed to prohibit the publication or release of statistics so classified as to prevent the identification of particular returns and the items thereof.

(f) Disclosure of amount of outstanding lien. -- If notice of lien has been recorded, the amount of the outstanding obligation secured by such lien may be disclosed to any person who furnishes written evidence satisfactory to the Director of Finance that such person has a right in the property subject to the lien or intends to obtain a right in such property.

774.18 Regulations may be Promulgated; Payments Due Taxpayers may be Withheld

(a) Regulations May Be Promulgated.

(1) The Director of Finance shall from time to time promulgate rules and regulations for making returns and for ascertainment, assessment and remittance of the tax imposed hereunder as he/she may deem necessary to enforce its provisions; and upon request shall furnish any taxpayer with a copy of such rules and regulations.

(2) The Director of Finance may prescribe, adopt, promulgate and enforce reasonable rules and regulations not in conflict with this Ordinance relating to any matter or thing pertaining to the administration and enforcement of the provisions of this Ordinance, including but not limited to provisions for the re-examination and correction of returns as to which overpayment or underpayment is claimed or found to have been made, and the rules and regulations so promulgated shall be binding upon all taxpayers.

(3) The Director of Finance shall prescribe printed forms for use by persons subject to the provisions of this Ordinance and shall make such forms available at his/her office for use by such persons.

(b) Payments Due Taxpayers may be Withheld. The Director of Finance, in order to protect the interests of the City, is authorized to withhold the payment of any claim or demand for payment of monies due from the City to any vendor, contractor, consultant or other person having unpaid or delinquent occupation tax liabilities until such unpaid tax, including applicable interest and penalties, shall first have been settled and adjusted. The Director of Finance shall notify the taxpayer by certified mail with return receipt requested, sent to the taxpayer's last known address, of his/her intention to make such levy, the effect of which shall be continuous from the date such levy is first made until the liability out of which such levy arose is satisfied.

774.19 Disposition of Funds Derived from Occupation Tax

All monies derived from the occupation tax levied under the provisions of this Ordinance up to seven million dollars per fiscal year shall be paid to the City and placed to the credit of the general fund of the City, and shall be used and expended as authorized by law. Any occupation tax revenue generated in excess of seven million dollars per fiscal year shall be deposited in a separate account and utilized exclusively for capital improvement projects. All expenditures from this line item shall require council approval prior to encumbrance. In the event that occupation tax revenues exceed nine million dollars per fiscal year, council shall provide for reductions in business and occupation taxes and/or other fees in like amount for the subsequent fiscal year.

774.20 Liens, release; subordination; foreclosure

(a) **General.** -- Any tax, penalties or interest due and payable under this Ordinance shall be a debt due the City. It shall be a personal obligation of the taxpayer and shall be a lien upon the real and personal property of the taxpayer.

(b) **Duration of lien**. -- The lien created by this section shall continue until the liability for the tax, penalties and interest is satisfied or upon the expiration of ten years from the

date the tax, penalties and interest are due and payable under this Ordinance or the date the tax return is filed, whichever is later.

(c) **Recordation**. -- The lien created by this section shall be subject to the restrictions and conditions embodied in Article ten-c, chapter thirty-eight of the West Virginia Code and any amendment made or which may hereafter be made thereto: Provided, That the notice of lien shall indicate the date the tax, penalties and interest are due and payable under this Ordinance or the date the tax return was filed.

(d) **Release or subordination**. -- The Director of Finance, pursuant to rules or regulations prescribed by him, may issue his certificate of release of any lien created pursuant to this section when the debt is adequately secured by bond or other security. He shall issue his certificate of release when the debt secured has been satisfied. The certificate of release shall be issued in duplicate. One copy shall be forwarded to the taxpayer, and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the release without payment of any fee and such recordation shall constitute a release and full discharge of the lien. The Director of Finance may issue his certificate of release of any such lien as to all or any part of the property subject to the lien, or may subordinate such lien to any other lien or interest, but only if there is paid to the City an amount not less than the value of the interest of the City in such property, or if the interest of the City in such property has no value.

(e) **Foreclosure.** -- The Director of Finance may enforce any lien created and recorded under this section, against any property subject to such lien by civil action in the circuit court of the county wherein such property is located, in order to subject such property to the payment of the tax secured by such lien. All persons having liens upon or having any interest in the property shall be made parties to such action. The court may appoint a receiver or commissioner who shall ascertain and report all liens, claims and interests in and upon the property, the validity, amount and priority of each. The court shall, after notice to all parties, proceed to adjudicate all matters involved therein, shall determine the validity, amount and priorities of all liens, claims and interests in and upon the property and shall decree a sale of such property by the sheriff or any commissioner to whom the action is referred, and shall decree distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties.

(f) **Discharge of lien**. -- A sale of property against which the City has a lien under this section, made pursuant to an instrument creating a lien on such property, or made pursuant to a statutory lien on such property, or made pursuant to a judicial order to enforce any judgment in any civil action, shall be made subject to and without disturbing the City tax lien if the City tax lien was recorded more than thirty days before such sale, unless:

(1) The Director of Finance is made a party to such civil action, or

(2) The Director of Finance is given notice of such sale in writing not less than fifteen days prior to sale, or

(3) The Director of Finance consents to such sale. Such notice shall contain the name of the owner of the property and the social security number or federal employer identification number of the owner.

774.21 Levy and Distraint

(a) **Authority of Director of Finance.** -- If the municipal occupation tax is shown to be due on a return, it is required to be paid at the time a return is filed and if any portion of such tax is not so paid, or if an assessment of tax is made by the Director of Finance and notice thereof is given as required by this Ordinance and such assessment has become final and is not subject to administrative or judicial review, then, if any person liable to pay any tax administered under this Ordinance neglects or refuses to pay the same within fifteen days after notice and demand, it shall be lawful for the Director of Finance (or his delegate) to collect such tax (and such further sum as is sufficient to cover the expense of the levy) by levy upon all property and rights to property belonging to such person or on which there is a lien provided in this Ordinance, for payment of the tax. If the Director of Finance makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be given by the Director of Finance (or his delegate) and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the fifteen-day period provided in this section.

(b) **"Levy" defined.** -- The term "levy" as used in this section includes the power of distraint and seizure by any means. Except as otherwise provided in this section, a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Director of Finance, or his delegate, may levy upon property or rights to property, he may seize and sell such property or rights to property, whether such property be real or personal, tangible or intangible.

(c) **Successive seizures.** -- Whenever any property or a right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the City for which levy is made, the Director of Finance may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(d) **Distress warrant.** -- The Director of Finance may issue a distress warrant to the sheriff of any county of West Virginia, or to any officer or employee of the Division, commanding him to levy upon and sell any such property or rights to property subject to levy in accordance with the provisions of this Ordinance. A distress warrant shall be executed within sixty days from the date the warrant was issued. The sheriff shall return the warrant and any money collected to the Director of Finance within sixty-five (65) days from the date the warrant was issued.

(e) **Requirement of notice before levy.**

(1) **In general.** -- Levy may be made under subsection (a) upon the salary or wages or other property or rights to property of any person with respect to any unpaid tax only after the Director of Finance has notified such person in writing of his intention to make such levy.

(2) **Ten-day requirement.** -- The notice required under paragraph (1) shall be given in person, or left at the dwelling or usual place of business of such person, or sent by certified mail to such person's last known address, no less than ten days prior to the day of levy: **Provided,** That no notice need be given if the Director of Finance has made a finding under the last sentence of subsection (a) that collection of the tax is in jeopardy.

(3) **Continuing levy on salary and wages.** -- The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until the liability out of which such levy arose is satisfied or becomes unenforceable by reason of lapse of time, at which time the Director of Finance shall promptly release such levy and notify the person upon whom such levy was made that such levy has been released.

774.22 Property Exempt from Levy

(a) **Enumeration.** -- There shall be exempt from levy:

(1) **Wearing apparel and school books.** -- Items of wearing apparel and school books that are necessary for the taxpayer or for members of his or her family.

(2) **Fuel, provisions, furniture and personal effects.** -- If the taxpayer is the head of a family, so much of the fuel, provisions, furniture and personal effects in his household and of the arms for personal use, livestock and poultry of the taxpayer, as does not exceed one thousand five hundred dollars in value; if the taxpayer is an individual who is not the head of a household, this exemption shall not exceed one thousand dollars.

(3) **Books and tools of a trade, business or profession.** -- So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate one thousand dollars in value.

(4) **Unemployment benefits.** -- Any amount payable to an individual with respect to his or her unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, or of any state.

(5) **Undelivered mail.** -- Mail, addressed to any person, which has not been delivered to the addressee.

(6) **Annuity and pension payments.** -- Annuity or pension payments under any pension or retirement plan, including social security payments.

(7) **Workers' compensation.** -- Any amount payable to an individual as workers' compensation (including any portion thereof payable with respect to dependents) under a workers' compensation law of the United States, or of any state.

(8) **Judgments for support of minor children.** -- If the taxpayer is required by a judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his other minor children, so much of his or her salary, wages or other income as is necessary to comply with such judgment.

(9) **Public assistance.** -- Any amount payable to any person from a public assistance or relief fund created under the law of the United States or of any state.

(10) **Minimum exemption for wages, salary and other income.** -- Any amount payable to or receivable by an individual as wages or salary for services provided by an employee to his or her employer, or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him or her during such period does not exceed the applicable exempt amount determined under subsection (d).

(11) **Homestead.** -- If the taxpayer owns a homestead located in West Virginia, the first five thousand dollars thereof shall be exempt from levy.

(b) **Appraisal.** -- The officer seizing property of the type described in subsection (a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the office making the seizure, the Director of Finance shall summon three disinterested individuals who shall make the valuation.

(c) **No other property exempt.** -- No property or rights to property shall be exempt from levy other than property specifically made exempt by subsection (a).

(d) **Exempt amount of wages, salary or other income.**

(1) In the case of an individual who is paid or receives all of his wages, salary and other income on a weekly basis, the amount of the wages, salary and other income payable to or receivable by the person during any week which is exempt from levy under paragraph (1), subsection (a) shall be:

(A) Thirty times the state minimum wage per hour, plus

(B) Twenty-five dollars for each additional dependent of the taxpayer.

774.23 Surrender of Property Subject to Levy

(a) **Requirement.** -- Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Director of Finance, surrender such property or rights (or discharge such obligation) to the Director of Finance, except such part of the property or rights as is, at the time of such demand, subject to any prior attachment, execution or levy.

(b) **Enforcement of levy.**

(1) **Extent of personal liability. --** Any person in possession of or obligated with respect to property subject to levy upon which levy has been made, who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Director of Finance, shall be personally liable to the City in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at a rate of twelve percent (12%) per annum, from the date of the levy. Any amount (other than costs) received under this paragraph shall be credited against the liability for the collection of which such levy was made.

(2) **Penalty for violation.** -- In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender the same without reasonable cause, such person shall be liable for a money penalty equal to fifty percent (50%) of the amount recovered under paragraph (1). No part of this penalty shall be credited against the tax liability for the collection of which such levy was made.

(c) **Effect of honoring levy.** -- Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which levy has been made, who upon demand by the Director of Finance, surrenders such property or rights to property (or discharges such obligation) to the Director of Finance, or who pays a liability under subsection (b)(1) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment.

(d) **"Person" defined.** -- The term "person" as used in subsection (a) includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee or member is under a duty to surrender the property or rights to property or to discharge the obligation.

774.24 Sale of Seized Property

(a) **Notice of seizure.** -- As soon as practicable after seizure of property, notice in writing shall be given by the Director of Finance to the owner of the property (or, in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the county where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such county, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) **Notice of sale.** -- The Director of Finance may sell any property seized under section 774.21. As soon as practicable after the seizure of the property, the Director of Finance shall give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notice of sale to be published as a Class II legal advertisement in some newspaper published or generally circulated within the county wherein such seizure is made, or the county where the property is located, the last date of publication being not less than five days prior to sale. This notice shall identify the property to be sold, and the date, time, place, manner and conditions of the sale thereof, all of which shall be at the discretion of the Director of Finance. The sale shall be conducted by public auction, or by public sale under sealed bids. Before the sale, the Director of Finance may determine a minimum price for which the property shall be sold, and if no person offers for such property at the sale, the amount of the minimum price, the property shall be declared to be purchased at such price for the City; otherwise the property shall be declared to be sold to the highest bidder. In determining the minimum price, the Director of Finance shall take into account the expense of making the levy and sale.

(c) **Sale of indivisible property.** -- If any property liable to levy is not divisible, so as to enable the Director of Finance by sale of a part thereof to raise the whole amount of the tax and expense of making the levy and sale, the whole of such property shall be sold. However, where the property sold is co-owned or jointly-owned by the taxpayer and an innocent third party, the proceeds of sale shall be divided, based on the respective interests of the persons owning the property immediately prior to the levy and sale, and the proceeds attributable to the interest of the innocent owner or owners shall be distributed to them: Provided, That where the property to be sold is so co-owned or jointly-owned by an innocent third party, having no delinquent tax liability attempted to be collected under such levy and sale, such innocent party may petition the circuit court of the county in which the property is located for relief, including postponement of the sale, in order that the court can determine if the property can be partitioned, so as to avoid sale of the innocent party's portion or grant and afford other relief by the court protective of the rights and interests of such innocent party.

774.25 Sale of Perishable Goods

If the Director of Finance determines that any property seized is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, he shall appraise the value of such property and:

(a) **Return to owner.** -- If the owner of the property can be readily found, the Director of Finance shall give him notice of such determination of the appraised value of the property. The property shall be returned to the owner if, within such time as may be specified in the notice, the owner either:

(1) Pays to the Director of Finance an amount equal to the appraised value; or

(2) Gives bond in such form, with such sureties, and in such amount as the Director of Finance shall prescribe, to pay the appraised amount at such time as the Director of Finance determines to be appropriate under the circumstances.

(b) **Immediate sale.** -- If the owner does not pay such amount or furnish such bond in accordance with this subsection, the Director of Finance shall, as soon as practicable, make public sale of the property in accordance with such regulations as may be prescribed by the Director of Finance.

774.26 Redemption of Property

(a) **Before sale.** -- Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, if any, to the Director of Finance at any time prior to the sale thereof, and upon such payment, the Director of Finance shall restore such property to him, and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) **Redemption of real estate after sale.**

(1) **Period.** -- The owners of any real property sold as provided in section 774.24, their heirs, executors or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within one hundred eighty (180) days after the sale thereof.

(2) **Price.** -- Such property or tract of property shall be permitted to be redeemed upon payment to the purchaser, or in case he cannot be found in the county in which the property to be redeemed is situated, then to the Director of Finance, for the use of the purchaser, his heirs or assigns, the amount paid by such purchaser and interest thereon at a rate of twelve percent (12%) per annum from the date the purchaser paid the purchase price to the date the property is redeemed.

(c) **Record.** -- When any lands sold are redeemed as provided in this section, the Director of Finance shall cause entry of the fact to be made upon the record mentioned in section 774.29 and such entry shall be evidence of such redemption.

(d) **Subrogation to City Lien.** -- Any person redeeming the interest of another shall be subrogated to the lien of the City on such interest. Such person shall lose his right to this lien, however, unless within thirty days after receiving the certificate of sale of personal property or the Director of Finance's deed of real property, he shall file with the clerk of the county in which the real property is located or of the county in which the personal property is located or where the delinquent taxpayer resides or has his business location, or if neither be in West Virginia, the clerk of Cabell County, his claim against the

delinquent taxpayer and a copy of the certificate of sale of personal property or deed to real property.

774.27 Certificate of Sale; Deed to Real Property

(a) **Certificate of sale.** -- In the case of property sold as provided in section 774.24 the Director of Finance shall provide to the purchaser a certificate of sale upon payment in full of the purchase price. In the case of real property, such certificate shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser and the price paid therefor.

(b) **Deed to real property.** -- In the case of any real property sold as provided in section 774.24 and not redeemed in the manner and within the time provided in section 774.26, the Director of Finance shall execute, in accordance with the laws of West Virginia pertaining to sales of real property under execution, to the purchaser of such real property at such sale, upon his surrender of the certificate of sale, a deed to the real property so purchased by him reciting the facts set forth in the certificate.

(c) **Real property purchased by the City.** -- If real property is declared purchased by the City at a sale pursuant to section 774.24, the Director of Finance shall, at the proper time, execute a deed therefor, and without delay cause such deed to be duly recorded in the office of the clerk of the county in which the real property is located.

774.28 Legal Effect of Certificate of Sale of Personal Property and Deed of Real Property

(a) **Certificate of sale of property other than real property.** -- In all cases of sale pursuant to section 774.24 of property (other than real property), the certificate of such sale:

(1) **As evidence.** -- Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(2) **As conveyances.** -- Shall transfer to the purchaser all right, title and interest of the party delinquent in and to the property sold; and

(3) **As authority for transfer of corporate stock.** -- If such property consists of stocks, shall be notice, when received, to any corporation, company or association of such transfer, and shall be authority to such corporation, company or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) **As receipts.** -- If the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) **As authority for transfer of title to motor vehicle.** -- If such property consists of a motor vehicle, shall be notice to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle has been transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

(b) **Deed of real property.** -- In the case of the sale of real property, pursuant to section 774.24;

(1) **Deed as evidence.** -- The deed of sale given pursuant to section 774.24 shall be prima facie evidence of the facts therein stated; and

(2) **Deed as conveyance of title.** -- If the proceedings of the Director of Finance as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the rights, title and interest the party delinquent had in and to the real property thus sold at the time the lien of the City attached thereto.

(c) **Effect of junior encumbrances.** -- A certificate of sale of personal property given or a deed to real property executed pursuant to section 774.27 shall discharge such property from all liens, encumbrances and titles over which the lien of the City with respect to which the levy was made had priority.

774.29 Records of Sale

(a) **Requirement.** -- The Director of Finance shall, for each county, keep a record of all sales of real property under section 774.24 and of redemptions of such property. The record shall set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers and the date of the deed.

(b) **Copy as evidence.** -- A copy of such record, or any part thereof, certified by the Director of Finance shall be evidence in any court of West Virginia of the truth of the facts therein stated.

774.30 Expense of Levy and Sale

The Director of Finance shall determine the expenses to be allowed in all cases of levy and sale under this Ordinance.

774.31 Application of Proceeds of Levy

(a) **Collection of liability.** -- Any money realized from a levy shall be applied as follows:

(1) **Expense of levy and sale.** -- First, against the expenses of the proceedings;

(2) **Liability of delinquent taxpayer.** -- The amount, if any, remaining after applying paragraph (1) shall then be applied against the liability in respect of which the levy was made or the sale conducted. The amount, if any, remaining shall then be applied against any other delinquent tax liability of the taxpayer for which levy may be made under section thirteen.

(b) **Surplus proceeds.** -- Any surplus proceeds remaining after the application of subsection (a) shall, upon application and satisfactory proof in support thereof, be credited or refunded by the Director of Finance to the person or persons legally entitled thereto.

774.32 Authority to Release Levy and Return Property

(a) **Release of levy.** -- It shall be lawful for the Director of Finance, under regulations prescribed by him, to release the levy upon all or part of the property or rights to property

levied upon where the Director of Finance determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent a subsequent levy.

(b) **Return of property.** -- If the Director of Finance determines that property has been wrongfully levied upon, it shall be lawful for the Director of Finance to return:

(1) The specific property levied upon;

(2) An amount of money equal to the amount of money levied upon; or

(3) An amount of money equal to the amount of money received by the City from a sale of such property. Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of nine months from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the City at a sale pursuant to section 774.24 (relating to manner and conditions to sale), the City shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the City from the resale of such property.

(c) The Director of Finance shall, upon request, make public the names and persons in whose favor a release of levy or return of property has been made in subsections (a) and (b).

(d) **Interest.** -- Interest shall be allowed and paid at a rate of twelve percent (12%) per annum:

(1) In a case described in subsection (b)(2), from the date the Director of Finance receives the money to a date (to be determined by the Director of Finance) preceding the date of return by not more than thirty days; or

(2) In a case described in subsection (b)(3), from the date of the sale of the property to a date (to be determined by the Director of Finance) preceding the date of return by not more than thirty days.

774.33 Collection by Civil Suit

The Division may initiate and/or maintain a civil action to recover delinquent taxes herein levied, interest, penalties, and administrative costs incurred in connection therewith, in any court of competent jurisdiction, which remedy shall be in addition to any and all other remedies which may be provided.

774.34 Violations

(a) Failure to Pay the Tax, Make Reports, Keep or Provide Records.

Any person subject to the provisions of this Ordinance, who shall fail to pay the tax, make the reports or any of them as herein required, or who shall fail to keep or provide records, or supply any information, as herein required, shall, be guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty dollars ($50.00), nor more than five hundred dollars ($500.00) for each offense and, in addition, may be imprisoned for a period not to exceed thirty (30) days. Each occurrence of such failure shall constitute a separate offense.

(b) Willful Refusal to Make Reports, or Permit Examination of Records.

Any person subject to the provisions of this Ordinance willfully failing or refusing to make the reports, furnish any supplemental returns or other data herein required, or who shall refuse to permit the examination of his records by the Division, as provided herein shall be guilty of a misdemeanor and, upon conviction shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) for each offense, and in addition, may be imprisoned for a period not to exceed six (6) months. Each occurrence of a failure to make such reports shall constitute a separate offense, and each refusal of a written demand by the Division to examine, inspect, or audit such records shall constitute a separate offense.

(c) Violation of Ordinance.

Any person who shall fail or neglect or refuse to perform any duty imposed by this Ordinance or any rule, regulation, or law thereof or who shall fail or neglect to do or perform any act or series of acts as required by this Ordinance or other City Ordinances shall, upon conviction, be punished by a fine not exceeding five hundred dollars ($500.00) for each offense, and in addition may be imprisoned for a period not to exceed thirty (30) days, or by both such fine and imprisonment.

(d) Fraudulent Statement or Failure to Furnish Statement to the Division.

In addition to the criminal penalty provided herein, any person required under this Ordinance to furnish a statement to the Division who willfully furnishes a false statement or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required shall for each such failure be subject to a penalty under this Ordinance of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) for each offense, and in addition may be imprisoned for a period not to exceed thirty (30) days, or by both such fine and imprisonment.

774.35 Request for Ruling on Items of Compensation

Any taxpayer may request a ruling on the determination of whether items of compensation are included in gross receipts and compensation or are not to be included in gross receipts and compensation as a measure of the taxes due and payable as levied by this Ordinance. Such requests shall be made in writing to the Division, and shall contain all pertinent facts relating to the item(s) in question.

774.36 Severability

The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence or part thereof, or the application thereof to any employer, employee or class or persons, shall be declared unconstitutional or invalid by a court of competent jurisdiction, such declaration shall not affect or impair the remainder of the Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of each other.

774.37 Repeal of Article 772 as Amended

The city service law adopted by Article 772, as amended, and as it has been amended is hereby repealed as of October 1, 2010, the date upon which this occupation tax becomes effective in the City; provided, however, that neither any cause of action nor fine, forfeiture judgment, penalty, writ, remedy or defense, accrued at said date, nor any prosecution, or complaint pending at said date shall be in any manner released, affected, abated, or impaired, by this Ordinance. Should the effective date of the occupation tax imposed by this Ordinance be postponed beyond October 1, 2010 due to the issuance of

an injunction or other court order, then Article 772 shall remain effective and shall not be repealed until the date that the occupation tax does become effective.

774.38 Effective Date of Ordinance

This Ordinance shall become effective and operative as such, commencing on and after October 1, 2010, and on and after said date shall be binding in the City.

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BE IT FURTHER ORDAINED that all other articles, sections and sub-sections of the Codified Ordinances of the City of Huntington, as revised, shall remain in full force and effect until further Ordinance of this Council.

SPONSORED BY COUNCILMAN STEVE WILLIAMS
APPROVED AS TO FORM BY SEM