

ORDINANCE NO. 41

AN ORDINANCE TO PROVIDE FOR THE RAISING OF REVENUE FOR THE CITY OF PLEASANT VALLEY BY IMPOSING A PRIVILEGE TAX UPON THE EXERCISING OF CERTAIN BUSINESSES AND OCCUPATIONS WITHIN THE CITY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLEASANT VALLEY:

SECTION ONE Definitions

When used in this ordinance the term "person" or the term "company," herein used interchangeably, includes any individual, firm, co-partnership, joint adventure, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

"Tax Year" or "taxable year" means the fiscal year beginning on and including the first day of July of each year, and extending to and including the thirtieth day of June of the following year.

"Sales," or "selling" includes any transfer of the ownership of or title to property, whether for money or in exchange for other property.

"Taxpayer" means any person liable for any tax hereunder.

"Gross income" means the gross receipts of the taxpayer received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales, and the value proceeding or accruing from the sale of investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash, or in kind or otherwise, interest or discount paid, or any other expenses whatsoever.

"Gross proceeds of sales" means the value, whether in money or other property, actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind.

The terms "gross income" and "gross proceeds of sale" shall not be construed to include (1) cash discounts allowed and taken on sales; (2) the proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit; (3) the amount allowed as "trade-in value" for any article accepted as part payment for any article sold; (4) excise taxes imposed by this State; or (5) money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for the repayment of a debt of another.

"Business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. "Business" shall not include a casual sale by a person who is not engaged in the business of selling the type of property involved in such casual sale. "Business" shall include the production of natural resources or manufactured products which are used or consumed by the producer or manufacturer and shall include the activities of a banking business or financial organization.

"Contracting" shall include the furnishing of work, or both materials and work, in the fulfillment of a contract for the construction, alteration, repair, development or improvement of a new or existing building or structure, or any part thereof, for the alteration, improvement or development of real property, for the alteration, construction or improvement of any street, alley, sidewalk, highway, bridge or appurtenant structure, but shall include only contracts exceeding \$100,000.00 for any one project, and shall not include contracts for construction of a one family residence.

SECTION TWO Imposition of Privilege Tax

There is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in Section Two (d).

(a) Production of Coal and Other Natural Resource Products
 (No tax imposed)

(b) Manufactured or Compounded Products
 (No tax imposed)

(c) Public Service or Utility Business
 (No tax imposed)

(d) Business of Contracting
 Upon every person engaging or continuing within this city in the business of contracting, the tax imposed shall be equal to one and two-tenths percent of the gross income.

SECTION THREE Businesses Exempt

The provisions of this ordinance shall not apply to:

(a) Societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit.

(b) Corporations, associations and societies organized and operated exclusively for religious and charitable purposes.

SECTION FOUR Computation of Tax Generally

The taxes levied under this ordinance shall be due and payable in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue. The taxpayer shall, within one month from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, sign the same, and mail the same together with a remittance, in the form required by Section Eleven, of the amount of tax to the office of the collector. When the total tax for which any person is liable under this article does not exceed the sum of one hundred dollars (\$100.00) in any year, the taxpayer may pay the same quarterly as aforesaid or, with the consent in writing of the collector, at the end of the month next following the close of the tax year.

Any other provision of this section notwithstanding, the collector, if he deems it necessary to insure payment of the tax, may require the return and payment under this section for periods of shorter duration than quarter-year periods.

SECTION FIVE

Return and Remittance by Taxpayer

On or before the expiration of one month after the end of the tax year each taxpayer shall make a return for the entire tax year showing the gross proceeds of sales or gross income of business, trade or calling, and compute the amount of tax chargeable against him in accordance with the provisions of this ordinance and deduct the amount of quarterly payments (as herein before provided), if any, and transmit with his report a remittance in the form required by SECTION TWELVE covering the residue of the tax chargeable against him to the office of the collector. Such return shall be signed by the taxpayer, if made by an individual, or by the president, vice president, secretary or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, joint adventure, association, trust or any other group or combination acting as a unit, any individual delegated by such firm, co-partnership, joint adventure, association, trust or any other group or combination acting as a unit shall sign the return on behalf of the taxpayer. The collector, for good cause shown, may extend the time for making the annual return on the application of any taxpayer and grant such reasonable additional time within which to make the same as may, by him, be deemed advisable.

SECTION SIX

Erroneous Computation

If the taxpayer shall make any clerical error which shall be apparent on the face of the return in computing the tax assessable against him under the provisions of this article, the collector shall correct such error or reassess the proper amount of taxes, and notify the taxpayer of his action by mailing to him promptly a copy of the corrected assessment, and any other additional tax for which such taxpayer may be liable shall be paid within fifteen (15) days after the receipt of such statement.

If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be immediately refunded to the taxpayer upon the requisition of the collector and shall be payable out of any funds available for the purpose. The taxpayer may, at his election, apply an overpayment credit to taxes subsequently accruing hereunder.

SECTION SEVEN

Failure to make Return

If the collector believes that the tax imposed by this ordinance is insufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax, or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, he may proceed to investigate and determine or estimate the tax liability of the taxpayer and make an assessment therefore.

SECTION EIGHT

Correction of Assessment

If any person, having made the return and paid the tax as provided by this ordinance, feels aggrieved by the assessment so made upon him for any year by the collector, he shall apply to the City Council by petition in writing within thirty days (30) after notice is mailed to him by the collector, for a hearing and a correction of the amount of the tax so assessed upon him by the collector, in which petition shall be set forth the reasons why such hearing should be granted and the amount such tax should be reduced. The City Council shall promptly consider such petition, and may grant such hearing or deny the same. If denied the petitioner shall be forthwith notified thereof; if granted, the City Council shall notify the petitioner of the time and place fixed for such hearing. After such hearing, the City Council may make such order in the matter as may appear to be just and lawful, and shall furnish a copy of such order to the petitioner. Any person improperly charged with any tax, and required to pay the same may recover the amount paid, together with interest, in such proper action or suit against the collector, as may be authorized by law.

SECTION NINE

Tax Year

The assessment of taxes made pursuant to this ordinance and the returns required therefore shall be for the year ending June 30. If the taxpayer, in exercising a privilege taxable under this article, keeps the books reflecting the same on a basis other than such year, he may, with the assent of the collector, make

annual returns and pay taxes for the year covering his accounting period as shown by the method of keeping his books.

SECTION TEN Tax to be Cumulative

The tax imposed by this ordinance shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, trade or calling. A person exercising a privilege taxable under this ordinance subject to the payments of all licenses and charges which are conditions precedent to exercising the privilege taxes, may exercise the privilege for the current year upon the condition that he shall pay tax accruing under this article.

SECTION ELEVEN Form of Payment

Every remittance of taxes imposed by this ordinance shall be made in lawful money of the United States or by bank draft, certified check, money order or certificate of deposit, to the collector who shall issue his receipt therefore to the taxpayer and pay the monies into the City Treasury to be kept and accounted for as provided by law.

SECTION TWELVE Tax a Debt; Lien of Unpaid Tax

A tax due and unpaid 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 property of the taxpayer; provided, that such lien shall be subject to the restrictions and conditions embodied in Article 10C, Chapter 38 of the Code of West Virginia, and any amendment made or which may hereafter be made thereto.

SECTION THIRTEEN Collection by Suit

The collector may by himself, or a duly appointed agent, collect taxes due and unpaid under this ordinance, together with all accrued penalties under the power conferred on the collector by law. After delinquency shall have continued for sixty (60) days, the collector may proceed by himself or his agent, in the circuit court of the county, to obtain an injunction restraining the further exercise of the privilege, until full payment shall have been made of all taxes and penalties due under this ordinance. In any proceeding under this section, upon judgment or decree for the plaintiff, he shall be awarded his costs.

SECTION FOURTEEN Payment when Person Sells Out or Quits Business

Any person exercising any privilege taxable under this ordinance who shall sell out his business or stock of goods, or shall cease doing such business, shall file the return prescribed by SECTION FIVE and remit the entire tax that may be chargeable against him because of all business done, within thirty days after selling out of his business or stock of goods, or ceasing to do such business. The tax imposed by this ordinance shall be a lien upon the property of such person.

The successor in business of any such person shall withhold so much of the purchase money as will satisfy the taxes and penalty which may be due until the former owner shall produce a receipt from the collector evidencing the payment of such taxes and penalty. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes and penalty shall remain unpaid after expiration of the thirty day (30) period allowed for payment thereof, he shall be personally liable for the payment of all such taxes and penalty, and the same shall be recoverable by the collector by action or suit as provided by law.

SECTION FIFTEEN Interstate Commerce Exception

The measure of tax assessed in this ordinance shall not include gross income derived from the commerce between this state and other states of the United States or between this state and foreign companies.

SECTION SIXTEEN**Certification of Payment Prerequisite to Financial Settlement with Contractor**

All officers and agents making contracts on behalf of the city shall withhold payment in the final settlement of such contract until the receipt of a certificate from the collector to the effect that all taxes levied or accrued under this ordinance against the contractor with respect to such contracts have been paid.

SECTION SEVENTEEN**Recordation of Assessment; Notice of Lien; Release of Lien**

The collector for the more effective collection of the tax imposed by this ordinance may file with the clerk of the county commission a certified copy of the assessment of taxes under this ordinance for recordation. A certificate so filed shall be recorded in the book in which similar certificates of the state are recorded and thereafter constitute binding notice of the lien created by this article upon all lands of the taxpayer located within the city as against all parties whose interest arose after such recordation. Upon payment of the taxes delinquent under this article the line of which shall have been recorded the collector shall certify in duplicate the fact and amount of payment and balance due, if any, and shall forward the certificates, one to taxpayer and one to clerk of the county commission. The clerk of the county commission shall record such certificates in the book in which releases are recorded. From the date that such certificate is admitted to record the land of the taxpayer in the city shall be free from any lien for taxes under this ordinance accrued to the date that the certificate was issued.

SECTION EIGHTEEN**Collection by Distrain, etc.**

The collector may distrain upon any goods, chattels or intangibles represented by negotiable evidences or indebtedness, of any taxpayer delinquent under this ordinance for the amount of all taxes and penalties accrued and unpaid hereunder. The lien created by this ordinance on real estate may be enforced by suit in equity and other means provided by law.

SECTION NINETEEN**Offenses and Penalties**

It shall be unlawful for any person to refuse to make the return provided to be made in SECTION FIVE; or to make any false or fraudulent return or false statement in any return, with the intent to defraud the city or to evade the payment of the tax, or any part thereof, imposed by this ordinance; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof imposed by this ordinance; or for the President, Vice President, Secretary or Treasurer of any corporation or member of a limited liability company to make or permit to be made for any corporation or limited liability company any false return, or any false statements in any return required in this ordinance, with the intent to evade the payment of any tax hereunder.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than five hundred dollars (\$500.00) or imprisoned not exceeding thirty (30) days in the city jail or punished by both fine and imprisonment, at the discretion of the court within the limitations aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of false swearing and of conviction thereof, shall be punished in the manner provided, by law. Any corporation or limited liability company for which a false return, or a return containing a false statement as aforesaid, shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500.00).

SECTION TWENTY**Administration of Ordinance**

In order to effectively carry out and enforce the provisions of this ordinance there is hereby created the office of collector of all business privilege and occupational taxes hereinbefore provided for, said collector to be appointed by the City Council to hold this office during the will and pleasure of said council. The administration of this ordinance is vested in, and shall be exercised by the collector who shall prescribe

forms and reasonable rules of procedure in conformity with this ordinance for the making of returns and for the ascertainment, assessment and collection of the taxes imposed hereunder; and the enforcement of any of the provisions of this ordinance in any of the courts of the State shall be under the exclusive jurisdiction of the collector.

SECTION TWENTY-ONE Validity of Ordinance

If any section of this ordinance shall be held invalid, or unconstitutional, its validity shall not affect any other sections of this ordinance that can be given effect without the invalid section, and for this purpose the sections of this ordinance are hereby declared to be severable.

SECTION TWENTY-TWO Repeal of Inconsistent Ordinances

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

SECTION TWENTY-THREE Effective Date of Ordinance

This ordinance shall be effective upon passage.

Adopted by the City Council this 23rd day of July, 2018.

Signed by Barbara Metcalfe

Mayor

ATTEST:

Signed by Pamela Foster

City Clerk