



***Summersville***

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***City of Summersville, WV***

**Municipal Home Rule  
Application**

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On letterhead

Draft

Date           ?          

Mr. Dave Hardy, Secretary and Chairman  
Department of Revenue  
Home Rule Board  
1900 Kanawha Blvd. E  
Building 1, W-300  
Charleston, WV 25305

**RE: City of Summersville, West Virginia Application and Written Plan  
West Virginia Municipal Home Rule Program**

Dear Members of the Municipal Home Rule Board:

On behalf of the citizens and elected officials of the City of Summersville, I am pleased to submit eight (8) original copies and one electronic copy of the City's application and proposed plan to participate in the Home Rule Program.

Written Plan Made Available to the Public:	June 24, 2022
First Publication of Notice of Public Hearing:	June 23, 2022
Second Publication of Notice of Public Hearing:	June 30, 2022
First Reading of Ordinance:	July 11, 2022
Public Hearing:	July 25, 2022
Second Reading and Adoption of Ordinance:	July 25, 2022

I respectfully request this application be agenda item for your October 2022 meeting. We thank you for your consideration in this vital matter and look forward to working in concert with you for the betterment of our state. If you have questions or require additional information; please do not hesitate to contact me anytime.

Sincerely,

Robert L. Shafer  
Mayor

# **Section I**

## **Applicant Information**

# Home Rule Plan & Amendment Template

## SECTION I: APPLICANT INFORMATION

Type of Submission:		<input checked="" type="checkbox"/> Initial Plan	<input type="checkbox"/> Proposed Amendment
Name of Municipality: City of Summersville			
Certifying Official:		Robert L. Shafer	Title: Mayor
Contact Person:		Robert L. Shafer	Title: Mayor
Address:		400 North Broad Street	
City, State, Zip:		Summersville, WV 26651	
Telephone Number:		304-872-1211	Fax Number: 304-872-2236
E-Mail Address:		mayor@summersvilewv.org	
Municipal Classification:			
<input type="checkbox"/> Class I		<input type="checkbox"/> Class II	<input checked="" type="checkbox"/> Class III <input type="checkbox"/> Class IV

## SECTION II: NARRATIVE (proposed plan or plan amendment)

1. Identify the specific state laws, policies, acts, resolutions, rules, or regulations that prevent the municipality from carrying out specific duties in the most cost effective, efficient, and timely manner.
2. Describe the specific problem(s) created by above stated laws, policies, acts, resolutions, rules, or regulations.
3. Define each proposed solution to the above described problem(s), including all proposed changes to law, policies, acts, resolutions, rules, or regulations.
4. See State Tax Department website for instructions regarding municipal sales and use tax (Business, Sales and Use Tax):  
<https://tax.wv.gov/Business/SalesAndUseTax/MunicipalSalesAndUseTax/Pages/MunicipalSalesAndUseTax.aspx>.

## SECTION III: ATTACHMENTS

1. Completed Plan and Amendment Checklist.
2. Affidavit of legal advertisement providing notice of the public hearing.
3. Minutes of public hearing, including comments (if any).
4. Copy of adopted ordinance authorizing submission of plan or amendment to Municipal Home Rule Board.
5. Fiscal statement demonstrating municipality's ability to manage costs or liabilities associated with proposal (if proposal is revenue related).
6. Affidavit of authorized municipality representative that municipality owes no outstanding State fees.
7. Attorney opinion letter stating that application and plan or amendment complies with applicable State law.

**NOTE:** Submit eight originals and one electronic copy of initial plan or amendment to the Municipal Home Rule Board a minimum of 30 days before a Board meeting.

## HOME RULE APPLICATION, PLAN AND AMENDMENT CHECKLIST

\_\_\_\_\_ Class II legal advertisement of Public Hearing

Dates \_\_\_\_\_

\_\_\_\_\_ Notice of Public Hearing to Municipal Home Rule Board (MHRB) and Cabinet Secretary of every State department

\_\_\_\_\_ Plan available for public inspection 30 days prior to Public Hearing

\_\_\_\_\_ Hearing

Date \_\_\_\_\_

\_\_\_\_\_ Ordinance authorizing plan or amendment

1<sup>st</sup> reading date \_\_\_\_\_

2<sup>nd</sup> reading date \_\_\_\_\_

Date of adoption \_\_\_\_\_

\_\_\_\_\_ Required narrative presentation of each separate proposal (see Sample Form Application)

### **ATTACHMENTS**

\_\_\_\_\_ Affidavit of legal notice of Public Hearing

\_\_\_\_\_ Minutes of Public Hearing, including comments (if any)

\_\_\_\_\_ Certified copy of ordinance authorizing plan or amendment

\_\_\_\_\_ Fiscal statement demonstrating municipality's ability to manage costs or liabilities associated with proposals

\_\_\_\_\_ Affidavit that municipality owes no outstanding State fees

\_\_\_\_\_ Attorney opinion letter that application and plan or amendment complies with applicable State law

\_\_\_\_\_ Submit eight (8) originals and one (1) electronic copy of application plan or amendment to the MHRB

# **Section II**

## **Narrative**

## INTRODUCTION:

The City of Summersville was founded in 1824. The city was named after Lewis Summers, a local judge who introduced the bill to create Nicholas County. The City of Summersville is the county seat and was the home to both Union and Confederate encampments during the Civil War. The city was mostly burned down by Confederate spy Nancy Hart during the war and was not rebuilt until 1884. In 1914, Nicholas County High School was established in the downtown area known today as "Old Main". The year 1960 was a big turn for the City of Summersville with the construction beginning on the dam, which would be later dedicated by President Lyndon B. Johnson in 1966.

Moving forward many years, Summersville has developed itself to serve as a multi-county hub. The upgrade of US Rt 19 from a two-lane road to a four-lane highway has proven to be essential to the city's economy. Our population can be misleading by the number itself as to what the City of Summersville has to offer (2020 census 3,121). The City of Summersville has just south of five hundred hotel beds, food service industry mixing locally owned cuisine with national chains, retail including old fashioned hardware, boutiques, quilt shop and a variety of national box stores. The city owned hospital is operated by WVU Medicine. Currently under construction is a new state of the art ninety bed nursing home. This is a public/private partnership, as fifty of the beds are owned by the City of Summersville.

Summersville is the owner/operator of the regional water and sewer utilities, as well as the hydro plant located at the Summersville Dam.

As a small Class III City, one can easily surmise that the City of Summersville is a small city with big city opportunity. Nestled in the majestic mountains of West Virginia, being the new gateway to the New River Gorge National Park, we highlight our outdoor adventure capitalizing on tourism. Summersville Lake is the biggest body of water in the State of West Virginia. The lake and its landscape, provides for world-class boating, kayaking, rock climbing, hiking, swimming & fishing.

The City of Summersville currently has 30 full-time employees, 17 full-time police officers and a volunteer fire department that averages 500 calls a year. We as a city, anticipate a 20% - 25% increase in visitation throughout the area putting a higher demand on our current work force and emergency services.



## **Section 2:**

### **Narrative**

#### **Issue 1: Municipal Sales and Use Tax**

Category - Tax

#### **Specific Barrier:**

West Virginia State Code § 8-13-5, § 8-13C-4(a), § 8-13C-4(b).

#### **Specific Problems created by law:**

WV Code § 8-13-5 sets forth standards by which municipalities can apply a Business and Occupation Tax ("B&O") on all businesses operating within the corporate limits of the municipality, but prohibits municipalities from charging a tax rate higher than the maximum rates imposed by the state. The State Legislature adopted the rates, classifications, and exemptions governing the application and collection of B&O taxes decades ago. The rates, tax classifications, rules governing the administration of the municipal business and occupation tax, have not been updated to reflect the modern economy. Further, recent legislative amendments to the B&O tax through the adoption of House Bill 4567 (Regular Session 2022) has decreased the City's tax base, making it more challenging to support essential municipal operations along with our vision for growth.

WV Code § 8-13C-4(a) permits municipalities to charge a 1% sales and use tax only if the municipality's pension fund is underfunded. The City of Summersville does not have a pension plan outside of the state's retirement plan for public employees.

WV Code § 8-13C-4(b) permits municipalities to charge a 1 % sales and use tax if they repeal their B&O Tax. The revenue generated by a 1 % sales tax will recover the lost revenue created by House Bill 4567 and create the additional revenue needed for our city's future comprehensive planning, allowing us to compete in the current economic environment.

#### **Proposed Solution:**

With the authority pursuant to West Virginia Code § 8-1-5a, the City of Summersville seeks to enact an ordinance that imposes a 1% municipal sales and use tax that would be administered, collected and enforced by the State Tax Commissioner and conform with the requirements of West Virginia Code § 11-10-11c and the requirements of the Streamlined Sales and Use Tax Administration Act as codified in West Virginia Code § 11-15B-1 et seq. As allowed by WV State Code, the City of Summersville seeks to enact a municipal sales and use tax while reducing its B&O tax to benefit retail business owners.

It is important to know the City of Summersville for decades has been very pro-business by charging approximately fifty percent of the allowable rate in most B&O tax categories (see chart below). This highlights our competitiveness in the region along with proof to business owners that the city will only tax what is needed to sustain the levels of expected services.

<b>Class</b>	<b>Business Classification</b>	<b>Current Summersville B&amp;O Rate</b>	<b>Maximum Allowable B&amp;O Rate</b>
9	Selling Tangible Property - Retailers	.250 %	.500 %
17	Contracting	1.000 %	2.000%
	Service of Calling and all Other		
19	Business	.525 %	1.000 %
20	Rents, Royalties, Fees or Otherwise	.525 %	1.000 %
22	Banking	.525 %	1.000 %

The City specifically proposes to reduce its B&O tax rate in the retail classification. The current rate of tax for retail is 0.25%. The City plans to reduce it by half, and the new rate of tax will be 0.125%. Under this plan, the City proposes to reduce B&O tax rates for an approximate reduction of \$447,000.00 annually to business owners.

In today's current economic environment, it is increasingly difficult to recruit businesses owners and developers to the municipality under a traditional B&O tax structure. Moving to a consumer sales and use tax, while lowering the B&O tax within various strategic business classifications like the retail classification, will encourage more developers and businesses to be a part of the City so that they can receive the advantages of municipal services.

The City of Summersville provides essential police protection in corporate boundaries and fire protection has a call area extending beyond city limits along with regular mutual aid to the entire county. As a small city with medium sized city budget and economics, we maintain all the standard administrative services expected of modern-day government. With aging infrastructure, we strive to prepare for our future growth along with the increased demand on our city provided services.

Moreover, because of the City's proximity to outdoor recreation including camping, hiking, biking, rafting, boating, and fishing, among others, we have seen an increased interest in people and businesses wanting to reside and locate in Summersville. The City anticipates the need for additional infrastructure development with expanded recreational opportunities. And, with increased tourism and business supporting that industry, there is a corresponding need for improved emergency services and infrastructure.

Along with maintaining our current portfolio, the City of Summersville has the current slate of projects that will be supported by the 1% additional tax. (~\$1.2 million)

1. 125.5 acre recreational facility. This facility will include 20 miles of mountain biking, hiking, and walking trails, as well as soccer, softball, and baseball facilities, and a

playground for all children including those with disabilities. The facility will appeal to the sports enthusiasts and those looking for outdoor adventure while visiting the New River National Park region. Not to mention the long overdue modern-day recreational facility for our locals.

2. Visitors Center: Capturing all the traffic entering and leaving the newly designated national park. This visitors center will not only highlight the New River Gorge National Park, but all the amenities offered by our county. I.e., the Summersville Lake, fishing, boating, kayaking, rock climbing, biking, hiking, and the beautiful Cranberry Glades.

3. Sidewalks/gateways connecting our community. We have current sidewalk projects creating accessibility and mobility from our downtown to our commercial shopping district. The goal is to continue to build out our sidewalk system creating a gateway to our shopping district and new recreational facility. This effort also highlights healthy lifestyles.

4. Increase funding for emergency services. This effort will first focus on retention for both police and firefighters. The current environment with law enforcement finds more officers leaving the profession every day. We need to not only equip them with the best equipment and personal protection but compensate them for the inherit risk of the job. The challenge with maintaining a volunteer fire department is the commitment of time and the out-of-pocket expenses to fulfill one's volunteer duty. The City of Summersville's volunteer fire department answers over 500 annual calls. Along with maintaining the best equipment, there is a strong consideration to add a paid driver system to our volunteer department.

The City of Summersville's history of excellent fiscal management will utilize additional revenue to responsibly grow, maintain, and sustain our infrastructural and economic future.

## **Issue 2: "On The Spot" Citations**

### **Category – Administrative**

The City of Summersville desires to clean up areas that have become unsightly due to owner's neglect in removing vegetation and other debris. Specifically, the City of Summersville seeks the authority for its code enforcement officer, building officer, and/or city's police department to cite property owners "on the spot" for violations of City ordinances concerning property maintenance, safety, and health hazards. Presently, City code enforcement officials are unable to issue citations "on the spot" for external sanitation violations and common nuisances, but rather are required to send preliminary notices and provide an opportunity to respond, which automatically increases costs to the City and delays resolution of the issue. This requires additional manpower and the lack of immediate citation power results in decreased compliance by property owners.

#### **Specific Legal Barrier**

W.Va. Code 8-12-16 allows municipalities to adopt ordinances regulating repair, closing, demolition, etc. of dwellings or buildings unfit for human habitation. Additionally, municipalities may adopt ordinances requiring the owner of any such dwelling or building to pay for the costs of repairs, alterations, improvements, demolition, etc. W.Va. Code 8-12-5(23) further vests municipalities with the authority to, by ordinance or resolution, provide for the elimination of hazards to public health and safety and abate or cause to be abated anything which a majority of the governing body finds to be a public nuisance, but does not provide authority for granting citation powers to code enforcement officials.

In fact, from W. Va. Code 8-12-16, in pertinent parts, the language restricts enforcement agents to the powers granted to civil process servers such that all orders issued by the enforcement agency shall be served in accordance with the law of this state concerning the service of process in civil actions, and, be posted in a conspicuous place on the premises affected by the complaint or order: Provided, That no ordinance may be adopted without providing for the right to apply to the circuit court for a temporary injunction restraining the enforcement agency pending final disposition of the cause.

#### **Specific Problem Caused by Law**

The result of the above code language is that, before citing property owners for property maintenance and related nuisance violations (e.g., sanitation issues, garbage buildup, graffiti, unmaintained lawns, unsafe or broken sidewalks), building and zoning inspectors must follow an onerous process of first posting public notice 10 days prior (warnings) and then applying for and receiving approval from the city's municipal court before a citation is issued. This process is inefficient, costly, and leads to an extended delay between the identification of a public nuisance and compliance from the property owner. In fact, because this process is so time-consuming and injurious to the apparent authority of the town's enforcement agents, non-compliance by the property owner is the more likely outcome.

#### **Proposed Solution**

Summersville seeks authority to enact an ordinance providing its code enforcement officers the authority to issue "on the spot" citations for certain violations. This citation power will extend to sanitation, drainage, sidewalks in disrepair, high weeds, grass, or both, graffiti, exterior garbage accumulation, and open storage in residential districts.

These citations may be issued to the owner, lessee, sub-lessee, tenant, occupant, or agent or manager thereof, presently having control over the property in question, and an opportunity to respond will be afforded to the cited party by contesting the citation in municipal court. The citation will be administered

substantially similar to how traffic citations are administered and are subject to appeal to the Circuit Court of Nicholas County.

Other municipalities already accepted in the "Home Rule" program have adopted Ordinances authorizing "on the spot" citations and have reported the success of this enforcement tool. Summersville intends to follow the models implemented by other participating Home Rule Municipalities.

# **Section III**

## **Affidavits**



ROBERT L. SHAFER, MAYOR

**AFFIDAVIT OF PUBLIC NOICE**

**STATE OF WEST VIRGINIA,  
COUNTY OF NICHOLAS, TO-WIT:**

The Affiant, after being duly sworn, swears and affirms as follows:

1. I, Gary Withee, am the Recorder of the City of Summersville.
2. A copy of the City of Summersville's proposed application and written plan to the West Virginia Municipal Home Rule Board was made available for public inspection at the City of Summersville City Hall, 400 North Broad Street, Summersville, WV, 26651, each business day during regular business hours, beginning Friday, June 24, 2022, through Monday, July 25, 2022.
3. A public hearing was properly noticed 30 days prior to the public hearing by a Class II legal advertisement and a public hearing was held at the aforementioned Summersville City Hall on Monday, July 25, 2022.
4. In accordance with the provision of the West Virginia Code 8-1-5a, as amended, notice of the public hearing was sent by certified mail to the Municipal Home Rule Board and the Cabinet Secretary of every state department.

And further the affiant sayeth not.

**CITY OF SUMMERSVILLE,  
WEST VIRGINIA**

\_\_\_\_\_  
**By: Gary Withee  
Its: Recorder**

Taken, sworn to and subscribed before me the \_\_ day of \_\_\_\_, 2022.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(seal)

NOTICE OF PUBLIC HEARING  
CITY OF SUMMERSVILLE

APPLICATION TO  
WEST VIRGINIA MUNICIPAL HOME RULE PROGRAM

Notice is hereby given by the CITY OF SUMMERSVILLE that it will hold a public hearing on Monday, July 25, 2022, at 7:00 pm at City Hall, Council Chambers, 400 North Broad Street, Summersville, West Virginia 26651.

The purpose of this public hearing is to discuss the City of Summersville's proposed Home Rule written plan and application pursuant to the provisions of West Virginia Code §8-1-5a, as amended. The information gathered and presented at this public hearing will be utilized by the City in its application to the Municipal Home Rule Board.

The City of Summersville's proposed Home Rule Program written plan will be available for public inspection in the City Hall, 400 North Broad Street, Summersville, West Virginia 26651, beginning on Friday, June 24, 2022, during normal business hours, Monday through Friday (excluding holidays), between the hours of 8:00 am and 4:30 pm. This proposed written plan can also be found on the City's website, <http://www.summersvillewv.org>.

All interested citizens are invited to attend the public hearing on Monday, July 25, 2022, at 7:00 pm and to present oral or written comments concerning the City's proposed Home Rule plan at that time. Written comments may also be addressed to Gary Withee, Recorder, City of Summersville, 400 North Broad Street, Summersville, West Virginia 26651.

The first reading of the ordinance approving the City of Summersville Home Rule written plan and application will take place at the regularly scheduled Council meeting at 7:00 pm on Monday, July 11, 2022. The second reading of the ordinance will take place immediately after the public hearing at the regularly scheduled Council meeting at 7:00 pm on Monday, July 25, 2022. If adopted, this ordinance will take effect upon passage. Both readings of the ordinance will take place at City Hall, Council Chambers, 400 North Broad Street, Summersville, West Virginia 26651.



Exhibit 1 – Affidavit of Publication of the Newspaper, Class II Legal Ad



ROBERT L. SHAFER, MAYOR

June 23, 2022

Mr. Dave Hardy, Secretary and Chairman  
Department of Revenue  
Home Rule Board  
1900 Kanawha Blvd. E  
Building 1, W-300  
Charleston, WV 25305  
*Via Certified Mail*

Dear Mr. Hardy,

The City of Summersville is providing notice of a public hearing scheduled for Monday, July 25, 2022, at 7:00 p.m. at the Summersville City Hall located at 400 North Broad Street, Summersville, West Virginia. This public hearing will address the City's intent to submit a Home Rule Application. I have attached a copy of the notice which will appear in the Nicholas Chronicle, also this notice has been sent to the cabinet secretary of every department *via certified mail*. If you have any questions, please feel free to contact me at 304-619-7900.

Sincerely,



Robert L. Shafer, Mayor  
City of Summersville

CC: C. Edward Gaunch, Secretary Department of Commerce,  
Mark Scott, Secretary Department of Administration,  
Harold Ward, Secretary, Department of Environmental Protection,  
Bill J. Crouch, Secretary Department of Health and Human Resources  
Jeff Sandy, Secretary Department of Homeland Security  
Jimmy Wriston, Secretary Department of Transportation  
Edward A. "Ted" Diaz, Secretary Department of Veterans Assistance  
Chelsea Ruby, Secretary Department of Tourism  
Mitch Carmichael, Secretary Department of Economic Development  
Randall Reid-Smith, Department of Arts, Culture and History  
Robert Roswall, Bureau of Senior Services  
Maj. Gen. Bill Crane, Adjutant General of the West Virginia National Guard

NOTICE OF PUBLIC HEARING  
CITY OF SUMMERSVILLE

APPLICATION TO  
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The City of Summersville's proposed Home Rule Program written plan will be available for public inspection in the City Hall, 400 North Broad Street, Summersville, West Virginia 26651, beginning on Friday, June 24, 2022, during normal business hours, Monday through Friday (excluding holidays), between the hours of 8:00 am and 4:30 pm. This proposed written plan can also be found on the City's website, <https://www.summersvillewv.org>.

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Ordinance Number: \_\_\_\_\_

3

AN ORDINANCE AUTHORIZING THE CITY OF SUMMERSVILLE TO SUBMIT TO THE MUNICIPAL HOME RULE BOARD AN APPLICATION AND WRITTEN PLAN TO ALLOW THE CITY TO PARTICIPATE IN THE PERMANENT MUNICIPAL HOME RULE PROGRAM CONSISTENT WITH WEST VIRGINIA CODE §8-1-5a

WHEREAS, in 2007, the West Virginia Legislature enacted WV Code §8-1-5a. known as the Municipal Home Rule Pilot Program; and

WHEREAS, the participation in the Home Rule Program by The City of Summersville, a Class III municipality, would give the City unique flexibility to apply local solutions to local problems, benefitting the greater community, including residents. visitors and businesses; and

WHEREAS, the City of Summersville desires to submit an application and written plan as attached hereto to the Municipal Home Rule Board requesting approval to participate in the permanent Municipal Home Rule Program; and

WHEREAS, the provisions of Senate Bill 4 require that all municipalities participating in the Municipal Home Rule Program shall pay an annual assessment of \$2,000 for the operation and administration of the Municipal Home Rule Board.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SUMMERSVILLE, THAT:

SECTION 1: The Mayor is hereby authorized and directed to submit to the Municipal Home Rule Board, in accordance with the provisions and requirements of W.Va. Code §8-1-5a, as amended, the application and written plan, and to request that the Board approve the application and written plan thereby allowing the City to participate in the permanent Municipal Home Rule Program.

Section 2: The Mayor and the City's officers are further authorized to do all things reasonably necessary to obtain approval of the City's application and written plan including, but not limited to, payment of the \$2,000 annual assessment if and when such assessment is made by the Municipal Home Rule Board.

SECTION 3: This Ordinance shall be effective upon passage after second reading and public hearing.

Passed on First Reading: 7-11, 2022

Adopted on Second Reading: 7-25, 2022

Public Hearing: 7-25, 2022

**CERTIFICATION**

The undersigned Recorder of the City of Summersville, West Virginia, does hereby certify that the attached is a true, accurate and sealed copy of the Ordinance enacted by the City Council of Summersville on \_\_\_\_\_, 2022, authorizing submission of an Application and Written Plan to the West Virginia Municipal Home Rule Board. This submission is in accordance with the provisions of West Virginia Code §8-15-5a, as amended.

Given under my hand and seal on this \_th day of \_\_\_\_\_, 2022.

City of Summersville,  
WEST VIRGINIA

\_\_\_\_\_  
By: Gary Withee  
Its: Recorder

Attach Supporting Exhibits

1. Copy of Agenda and Meeting Minutes from \_\_\_\_\_, 2022 Meeting
2. Copy of Agenda and Meeting Minutes from \_\_\_\_\_, 2022 Meeting
3. Minutes of Public Hearing, including comments received (if any), sign-in sheet from \_\_\_\_\_, 2022 Public Hearing.



## Fiscal Impact Worksheet for Home Rule Proposals

Summersville currently receives approximately \$1.3 million in B&O tax revenue per fiscal year.

2016-17	\$1,345,140
2017-18	\$1,277,393
2018-19	\$1,349,234
2019-20	\$1,392,775
2020-21	\$1,361,625
Average	<u>\$1,345,233</u>

The City proposes to make the following reduction in the B&O tax rate:

<u>Business Classification</u>	<u>Current Rate</u>	<u>New Rate</u>	<u>Tax Reduction Based on 2021 Gross</u>
9 Selling Tangible Property: Retailer	0.250%	0.125%	\$446,940

The projected fiscal impact of a one percent (1%) consumer sales and use tax is as follows:

Gross Retail Sales	\$176,724,825
Sales Tax %	1.0%
Sales Tax Revenue	<u>\$1,767,248</u>
State Admin Fee* 5.0%	<u>(\$88,362)</u>
Net Sales Tax Revenue	<u>\$1,678,886</u>

The proposed tax reduction will result in a tax cut of \$446,940 for the businesses located in Summersville. If the proposal is approved by the Municipal Home Rule Board and adopted by City Council the projected net change in revenue is:

Sales and Use Tax Revenue	\$1,678,886
B&O Tax Reduction	<u>(\$446,940)</u>
Net change in revenue	<u>\$1,231,946</u>

The Administrative proposal for the on-the-spot citations is not estimated to impose a material cost or liability.

In conclusion, the City estimates a net revenue gain of approximately \$1.2 million corresponding to its sales tax implementation. The City can cover all anticipated costs and liabilities as outlined in its proposal.

Prepared by : Jo Etta Comer, Finance Director

Date: 06-07-22

\* The state administrative fee is a maximum of 5% - adjusted annually

**AFFIDAVIT**

**STATE OF WEST VIRGINIA,  
COUNTY OF NICHOLAS, TO-WIT:**

The Affiant, after being duly sworn, swears and affirms as follows:

1. I, Robert L. Shafer, am the Mayor of the City of Summersville.
2. As the Mayor and Chief Executive Officer, I am familiar with all of the financial affairs for the City of Summersville.
3. I certify that the City of Summersville is not delinquent nor has any outstanding payments due to the State of West Virginia.

And further the affiant sayeth not.

**CITY OF SUMMERSVILLE,  
WEST VIRGINIA**

\_\_\_\_\_  
**By: Robert L. Shafer**  
**Its: Mayor**

Taken, sworn to and subscribed before me the \_\_\_\_ day of \_\_\_\_, 2022.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public





STATE OF WEST VIRGINIA  
State Tax Department, Taxpayer Services Division  
P.O. Box 885  
Charleston, WV 25323-0885

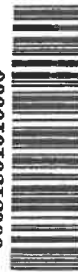


Matthew R. Irby, State Tax Commissioner

TOWN OF SUMMERSVILLE  
PO BOX 525  
SUMMERSVILLE WV 26651-0525

Letter Id: L1449592096  
Issued: 05/24/2022

00031501010000



## West Virginia State Tax Department

### Statement of Good Standing

EFFECTIVE DATE: May 24, 2022

A review of tax accounts indicates that TOWN OF SUMMERSVILLE is in good standing as of the effective date of this document. Please note, this Statement of Good Standing expires on **August 22, 2022**.

The issuance of this Statement of Good Standing shall not bar any audits, investigations, assessments, refund or credits with respect to the taxpayer named above and is based only on a review of the tax returns and not on a physical audit of records.

Sincerely,

Nicole Grant, Tax Unit Supervisor  
Taxpayer Services Division

Draft

\_\_\_\_\_, 2022

The Honorable David Hardy  
Cabinet Secretary and Chairman  
West Virginia Municipal Home Rule Board  
State Capitol Complex, Room W-300  
1900 Kanawha Boulevard, East Charleston, West Virginia 25305

RE: City of Summersville, West Virginia  
Municipal Home Rule Application and Written Plan

Mr. Chairman and Members of the Board:

We have acted as counsel to the City of Summersville (the "City") in connection with its application and proposed written plan to the West Virginia Municipal Home Rule Board (hereinafter referred to as the "Application"). For the purposes of the opinions contained in this letter, we have examined West Virginia Code §8-1-5a as amended, as well as the Application provided to us by the City. As to any facts relevant to our opinion which we did not independently establish, we have relied upon factual representations contained within the Application, and any documentation submitted contemporaneously therewith.

We find that the Application does not include any proposals that are prohibited by West Virginia Code §8-1-5a(i). Further, we find that the Application's proposal regarding taxation complies with the relevant provisions of West Virginia Code §8-1-5a(i)(14), and the City shall use the services of the State Tax Commissioner to administer, enforce, and collect the tax required by the provisions of West Virginia Code §11-15-1 et seq., §11-15A-1 et seq., and §11-15B-1 et seq. and all applicable provisions of the Streamlined Sales and Use Tax Agreement.

Finally, as evidenced by the documentation enclosed with the Application, the City made available a copy of its proposed Application and Home Rule Written Plan for public viewing and published thirty days advance notice of a public hearing on the Application, conducted such a public hearing, and adopted an ordinance authorizing the City to submit the Application. Moreover, the Mayor has certified herewith that the City is current in payment of all state taxes and fees to the State of West Virginia.

[Form of Attorney Opinion – to be on Letterhead of White Law Offices]

Based upon the foregoing, we opine that the City of Summersville's Application does not violate the provisions of the West Virginia Code §8-1-Sa, as amended. This opinion is solely for the benefit of the West Virginia Municipal Home Rule Board in connection with the Application of the City of Summersville to the permanent Municipal Home Rule Program and without our written consent, this opinion letter may not be used or relied upon by any other person for any other purpose whatsoever.

Sincerely,

[Signature block]

*[First Page To be on Letterhead of Summersville]*

To the Members of the Home Rule Board,

Please use this as confirmation that the City of Summersville, West Virginia, submitted a draft municipal sales and use tax to the West Virginia Tax Department (*See, Exhibit 1*). Tax Department comments were received on \_\_\_\_\_, 2022, advising the City that its proposed municipal sales and use tax ordinance appears to generally conform to the requirements for imposing municipal sales and use taxes.

The City will fully comply with the provisions of the West Virginia Code pertaining to municipal sales and use tax ordinance adoption as well as any applicable rules and regulations governing municipal sales and use tax. Because the City intends to proceed under its home rule plan as presented herein, the City must also reduce its B&O tax in the retail classification before imposing sales and use taxes. The City will comply with the Tax Department's Legal Division requirement for written confirmation of the reduction as well as submit a copy of the passed ordinance and a copy of the Municipal Sales and Use Tax Check List at least 180 days before the taxes are imposed. Furthermore, the City has provided the Tax Account Administration Division a complete boundaries database and map at least 180 days before the taxes are imposed.

**CITY OF SUMMERSVILLE,  
WEST VIRGINIA**

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**By: Robert Shafer**  
**Its: Mayor**

Ordinance Number: \_\_\_\_\_

**AN ORDINANCE AUTHORIZING A CITY OF SUMMERSVILLE MUNICIPAL SALES AND SERVICE TAX AND A MUNICIPAL USE TAX IN ACCORDANCE WITH ITS HOME RULE PLAN, CREATING A NEW ARTICLE, IMPOSING MUNICIPAL SALES AND USE TAXES AT A RATE OF ONE PERCENT, AND TO BE THE "CITY OF SUMMERSVILLE MUNICIPAL SALES TAX ORDINANCE"**

**AUTHORITY UNDER W. Va. Code § 8-1-5a**

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SUMMERSVILLE, THAT THERE IS HEREBY CREATED AND ESTABLISHED "ARTICLE \_\_. MUNICIPAL SALES AND USE TAXES" OF THE CITY CODE AND CODIFIED ORDINANCES OF THE CITY OF SUMMERSVILLE IMPOSING MUNICIPAL SALES AND USE TAXES AS FOLLOWS:

**ARTICLE \_\_. MUNICIPAL SALES AND USE TAXES.**

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**§ 1. City Council Findings.**

(a) The Municipal Home Rule Board on \_\_\_\_\_, 2022, approved the home rule plan submitted by the City of Summersville, West Virginia (hereinafter "City"), thereby allowing the City to adopt a municipal sales and service tax and a municipal use tax pursuant to W. Va. Code § 8-1-5a without the limiting restrictions in W. Va. Code § 8-13C-1 *et seq.* In accordance with its home rule plan, the City Council hereby finds and declares that the adoption by this City for its municipal sales and service tax and its municipal use tax

provisions of the Code of West Virginia, 1931, as amended, relating to imposition, administration, collection and enforcement of the State consumers sales and service tax codified in W. Va. Code § 11-15-1 *et seq.*, the State use tax codified in W. Va. Code § 11-15A-1 *et seq.*, and the Streamlined Sales and Use Tax Act codified in W. Va. Code § 11-15B-1 *et seq.* will (1) simplify collection of the City's sales and use taxes, (2) simplify preparation of municipal sales and use tax returns by taxpayers, and (3) improve enforcement of the City's sales and use taxes.

(b) The City Council does, therefore, declare that this article be construed so as to accomplish the foregoing purposes.

**§ 2. Definitions.**

(a) Terms used in this article or in the administration, collection and enforcement of the taxes imposed by this article and not otherwise defined in this article shall have the meanings ascribed to them in articles nine, ten, fifteen, fifteen-a and fifteen b, chapter

eleven of the Code of West Virginia, 1931, as amended.

(b) As used in this article:

(1) "Business" includes all activities engaged in or caused to be engaged in by any person with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions, which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

(2) "City" or "this City" means the City of Summersville, West Virginia.

(3) "Code of West Virginia" or "W. Va. Code" means the Code of West Virginia, 1931, as amended from time to time by the West Virginia Legislature.

(4) "Person" means any individual, partnership, association, corporation, limited liability company, limited liability partnership or any other legal entity, including this state or its political subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator of any person.

(5) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;

(6) "Purchase price" means the measure subject to the taxes imposed by this article and has the same meaning as sales price;

(7) "Purchaser" means a person who purchases tangible personal property, custom software or a service taxed by this article.

(8) "Sale," "sales" or "selling" have the meaning ascribed to those terms in article fifteen-b, chapter eleven of the Code of West Virginia.

(9) "Sales and use taxes" means the taxes imposed by sections [3] and [4] of this article.

(10) "Sales price" has the meaning ascribed to that term in article fifteen-b, chapter eleven of the Code of West Virginia.

(11) "Sales tax" means the tax levied by section [3] of this article.

(12) "Service" or "selected service" have the meaning ascribed to those terms in article fifteen-b, chapter eleven of the Code of West Virginia.

(13) "State sales tax" means the tax levied by article fifteen, chapter eleven of the Code of West Virginia, as amended.

(14) "State use tax" means the tax levied by article fifteen-a, chapter eleven of the Code of West Virginia, as amended.

(15) "Tax" means the taxes imposed by this article and includes additions to tax, interest and penalties levied under article ten, chapter eleven of the Code of West Virginia, 1931, as amended.

(16) "Tax Commissioner" means the Chief Executive Officer of the Tax Division of the Department of Revenue of this State, as provided in W. Va. Code § 11-1-1.

(17) "This state" means the State of West Virginia.

(18) "Ultimate consumer" or "consumer" means a person who uses or consumes services, tangible personal property or custom software.

(19) "Use" for purposes of the tax imposed by section [4] of this article means and includes:

a. The exercise by any person of any right or power over tangible personal property or custom software incident to the ownership, possession or enjoyment of the property, or by any transaction in which possession of or the exercise of any right or power over tangible personal property, custom software or the result of a taxable



service is acquired for a consideration, including any lease, rental or conditional sale of tangible personal property or custom software; or

b. The use or enjoyment in this state of the result of a taxable service.

As used in this definition, “enjoyment” includes a purchaser's right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property.

The term “use” does not include the keeping, retaining or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the purpose of subsequently transporting it outside the City for use thereafter solely outside this City.

(20) “Use tax” means the tax imposed by section [4] of this article.

(21) “Vendor” means any person engaged in this City in furnishing services taxed by this article or making sales of tangible personal property or custom software. “Vendor” and “seller” are used interchangeably in this article.

### **§ 3. Imposition of Municipal Sales and Service Tax.**

For the privilege of selling tangible personal property or customer software and for the privilege of furnishing certain selected service, a vendor doing business in this City shall collect from the purchaser the taxes imposed by this section and pay the amount of taxes collected to the tax commissioner at the same time and in the same manner as the consumers sales and service tax imposed by article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, are paid to the tax commissioner. The rate of tax shall be one percent of the sales price, as defined in section [2] of this article of the tangible personal property, custom software or taxable service purchased or leased.

#### **§ 4. Imposition of Municipal Use Tax.**

An excise tax is hereby levied and imposed on the use in this city of tangible personal property, custom software and the results of taxable services, to be collected and paid to the tax commissioner as agent for the City in the same manner that state use tax is collected under article fifteen-a and article fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended, and remitted to the tax commissioner. The rate of tax shall be one percent of the purchase price, as defined in section [2] of this article, of the tangible personal property, custom software or taxable service used within the City.

#### **§ 5. Calculation of Tax on Fractional Parts of Dollar.**

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

#### **§ 6. State and Local Tax Bases.**

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

#### **§ 7. Exceptions.**

The taxes imposed by this article do not apply to:

(1) The sale or use of motor fuel, as defined in article fourteen-c, chapter eleven of the Code of West Virginia, 1931, as amended.

(2) The sale or use of motor vehicles upon which the tax imposed by section three-c, article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, is paid.

(3) The purchase or use of any tangible personal property, custom software or service that the city is prohibited from taxing under the laws of this state or of the United States.

(4) The sales tax imposed by section [3] of this article does not apply to any transaction that is exempt from the tax imposed by article fifteen, chapter eleven of the Code of West Virginia.

(5) The use tax imposed by section [4] of this article does not apply to any purchase upon which the sales tax imposed by section [3] has been paid.

#### **§ 8. Credit Against Municipal Use Tax.**

(a) A person is entitled to a credit against the use tax imposed by section [4] of this article on the use of a particular item of tangible personal property, custom software or results of a taxable service equal to the amount, if any, of sales tax lawfully paid to another municipality for the acquisition of that property, custom software or service: *Provided*, that the amount of credit allowed may not exceed the amount of use tax imposed by section [4] of this article on the use of the tangible personal property, custom software or results of the taxable service in this City.

(b) For purposes of this section:

(1) "Sales tax" includes a sales tax or compensating use tax imposed on the sale or use of tangible personal property, custom software or the results of a taxable

service by the municipality in which the sale occurred; and

(2) "Municipality" includes municipalities of this state or of any other state of the United States.

(c) No credit is allowed under this section for payment of any sales or use taxes imposed by this State or any other state. For purposes of this paragraph, "state" includes the 50 states of the United States and the District of Columbia but does not include any of the several territories organized by Congress.

### **§ 9. Tax cumulative.**

The taxes imposed by this article are in addition to other taxes imposed on the sale or use of tangible personal property, custom software or taxable services including, but not limited to, the State consumers sales and service tax imposed by article 15, chapter 11 of the W. Va. Code; the State use tax imposed by article 15A, chapter 11 of the W. Va. Code; the public utility tax imposed by this City pursuant to W. Va. Code § 8-13-5a; the amusement tax imposed by this City pursuant to W. Va. Code § 8-13-6; the tax on sales of alcoholic liquors and wine imposed by this City pursuant to W. Va. Code § 8-13-7; the hotel occupancy tax imposed by this City pursuant to article 18, chapter 7 of the W. Va. Code; and the special district excise taxes imposed by a county pursuant to W. Va. Code § 7-22-1 *et seq.* or a municipality pursuant to W. Va. Code § 8-38-1 *et seq.*

### **§ 10. Local Rate and Boundary Data Base; Changes.**

(a) The tax commissioner is required by W. Va. Code § 11-15B-35 to maintain a database for all jurisdictions levying a sales or use tax in this State. The Recorder shall furnish the tax commissioner with information the tax commissioner requires for that database that will allow the tax commissioner to maintain a database that assigns each

five-digit and nine-digit zip code within the City to the proper rate of tax. If any nine-digit zip code area includes area outside this City, the single state and local rate assigned to that area in the tax commissioner's database will be the lowest rate applicable to that area: *Provided*, that, when sales occur at and are sourced to a physical location of the seller located in the City in that nine-digit zip code area, the seller shall collect the tax imposed by section [3] of this article.

(b) Whenever boundaries of the City change, whether by annexation or de-annexation, the Recorder shall promptly notify the tax commissioner in writing of the change in boundaries; provide the tax commissioner with the nine-digit zip code or codes for the area annexed or de-annexed; and any other information the tax commissioner may require to maintain the database. An ordinance annexing property into the City, or an ordinance removing property from the corporate limits of the City may not take effect any sooner than the first day of a calendar quarter that begins 60 days after the City provides written notice to the tax commission of a change in the municipal boundaries.

(c) The nine-digit database shall be maintained by the City until such time as the tax commissioner allows use of a different system to determine whether a location is within or outside the corporate limits of the City.

## **§ 11. State level administration.**

(a) The tax commissioner is responsible for administering, collecting, and enforcing the taxes imposed by this article as provided in W. Va. Code § 8-13C-6 and § 11-15B-33. The city may enter into a written agreement with the tax commissioner that will allow employees of the City auditing a vendor whose primary business location is in the City for compliance with the City's business and occupation tax to also audit that business location for compliance with the sales and use tax laws of this State and this City and

obligate the City to share that information with the tax commissioner.

(b) The tax commissioner may retain from collections of the taxes imposed by this article the fee allowed by W. Va. Code § 11-10-11c or by any other state law or legislative rule.

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

## **§ 12. Administrative procedures.**

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

## **§ 13. Criminal Penalties.**

Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in article nine, chapter eleven of the Code of West Virginia applies to the administration, collection and enforcement of the municipal sales and use taxes imposed pursuant to this article with like effect as if that act were applicable only to the taxes

imposed pursuant to this article and were set forth in extenso in this article, as provided in W. Va. Code § 8-13C-6: *Provided*, that the criminal penalties imposed upon conviction for a criminal violation of this article may not exceed the maximum penalties allowed by law for a similar violation of the ordinances of this City.

**§ 14. [Reserved].**

**§ 15. Automatic Updating.**

Any amendments to articles nine, ten, fifteen, fifteen-a and fifteen-b, chapter eleven of the Code of West Virginia shall automatically apply to the municipal sales and use tax imposed pursuant to this article, to the extent they are applicable to the taxes imposed by this article.

**§ 16. Deposit of Taxes Collected in a Special Revenue Fund.**

- (a) There is hereby established a special revenue fund in the City Treasury which shall be designated and known as the City Sales and Use Tax Fund. The City Sales and Use Tax Fund shall consist of:
  - a. All revenues received from collection of the City's sales and use taxes, including any interest, additions to tax and penalties deposited with the City;
  - b. All appropriations to the fund;
  - c. All interest earned from investment of the fund; and
  - d. Any gifts, grants or contributions received and placed by the City into the City Sales and Use Tax Fund.
- (b) Revenues in the City Sales and Use Tax Fund shall not be treated by any

person to be a general revenue of the City. Revenues in the City Sales and Use Tax Fund shall be disbursed in the manner and consistent with the priorities set forth for in subsection (c) of this Section.

(c) Revenues in the City Sales and Use Tax Fund shall be used:

- a. First, to satisfy the debt service requirements each fiscal year on any bonds issued by, or other obligations incurred by, the City, from time to time, allocated or tied to such dedicated revenue account including any refunding bonds; to finance civic improvement projects; as well as city-wide infrastructure and economic development projects; and, for any other economic development or public safety projects, including the funding of any reserve funds relating to any such bonds or other obligations, and/ or to make lease payments which secure bonds issued to finance improvements to such projects;.
- b. Second, to pay for capital improvement projects on a pay as you go basis; and
- c. Third, after providing for payment of first priority items, any unencumbered revenue in the City Sales and Use Tax Fund may periodically be transferred as necessary or convenient to the City's General Revenue Fund.

#### **§ 17. Issuance Of Revenue Bonds.**

- (a) The City shall have the power and authority to issue its revenue bonds or other obligations or refunding revenue bonds or other obligations, as appropriate, under and pursuant to Chapter 8, Article 16 or other appropriate provisions of the West Virginia Code as may be applicable from time to time (the "Bond Act") for the purposes of



financing or refinancing costs of infrastructure improvements or economic development activities and projects within the City. The City may pledge or otherwise utilize the collections of the municipal sales and use taxes imposed by this article and the funds on deposit from time to time in the City Sales and Use Tax Fund to satisfy the debt service requirements and any prior debt service requirements deficit each fiscal year on, and to fund or replenish any required reserves in accordance with the bond documents for, any bonds or other obligations issued by the City from time to time, including any refunding bonds, to finance or refinance infrastructure improvements or economic development activities and projects within the City, including the funding or replenishing of any reserve funds relating to any such bonds or other obligations, and/or to make lease payments which repay the debt service or otherwise secure bonds or other obligations issued to finance or refinance infrastructure improvements or economic development activities and projects within the City.

- (b) The City may utilize the procedures established pursuant to the Bond Act in connection with the issuance of such bonds or other obligations and in connection therewith it is hereby clarified and directed that the municipal sales and use taxes imposed by this article shall not be considered to be taxation solely for the purposes of and as contemplated by Chapter 8, Article 16 of the West Virginia Code.

#### **§ 18. Severability and Savings Clause.**

If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or

application, and to this end the provisions of this article are severable. The City Council declares that it would have adopted this article irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the article be enforced.

**§ 19. Effective Date.**

(a) This article shall become effective upon its adoption by the City Council of this City on \_\_\_\_\_, 2022. However, the City Council hereby suspends imposition and collection of the municipal sales and use taxes imposed by this article until July 1, 2023, or such later first day of July as required by the legislative rule codified in W. Va. Code St. R. § 110- 28-1 *et seq.*

**§ 20. Notification of Tax Commissioner.**

Upon adoption of this ordinance by City Council, the city Recorder shall forthwith send to the Tax Commissioner a certified copy of this ordinance, the rate and the boundary database required by section [10] of this article, along with a description of the boundaries of the City, and such other information as the Tax Commissioner may need to administer, collect and enforce the taxes imposed by this Article.

Passed on First Reading: \_\_\_\_\_, 2022

Adopted on Second Reading: \_\_\_\_\_, 2022

Notice of Public Hearing Published: \_\_\_\_\_, 2022

Date of the public hearing prior to second reading  
required by W. Va. Code § 8-11-4(a)(2): \_\_\_\_\_, 2022

CERTIFICATION

The undersigned Recorder of the City of Summersville, West Virginia, does hereby certify that the attached is a true, accurate and sealed copy of the Ordinance enacted by the City Council of Summersville on \_\_\_\_\_, authorizing the City of Summersville to adopt a municipal sales and service tax and a municipal use tax. This submission is in accordance with the provisions of West Virginia Code §8-15-5a, as amended.

Given under my hand and seal on this \_\_\_\_th day of \_\_\_\_\_, 2022.

City of Summersville,  
WEST VIRGINIA

\_\_\_\_\_  
By: Gary Withee  
Its: Recorder