

**AN ORDINANCE AMENDING ARTICLE 768
ENTITLED CONTRACTOR LICENSING**

WHEREAS, West Virginia Code section 8-13-4 authorizes municipalities to require a license for any activity requiring licensure by the state, except where prohibited by general law, and separately authorizes municipalities to establish a general business license and associated fee; and

WHEREAS, the City of Morgantown has established a general business license requirement that applies to all persons and entities conducting business within the city; and

WHEREAS, West Virginia Code section 30-42-20 provides that no local government may require an additional license or other evidence of competence as a contractor from any person holding a state contractor’s license; and

WHEREAS, updating the provisions of Article 768, entitled Contractor Licensing, will conform the provisions to the referenced laws and ensure that no additional contractor license is required to operate as a contractor within the city and that all contractors operating within the city possess a valid business license and comply with any and all other applicable laws and regulations when obtaining permits to engage in work as a contractor within the city;

NOW, THEREFORE, the City of Morgantown hereby ordains that Article 768 of the City Code is amended as follows:

Sec. 768.01. Purpose.

The purpose of this article shall be to insure that all persons desiring to perform contracting work in the City of Morgantown this Municipality possess a valid business license issued by the City are duly licensed by ~~not only the State but this Municipality~~ so as to ensure capable and skilled craftsmanship utilized in construction projects in this City Municipality, both public and private, to ensure fair bidding practices between competing contractors through uniform compliance with the laws of this State and City Municipality, and to protect the public from unfair, unsafe and unscrupulous bidding and construction practices.

Sec. 768.02. Definitions.

~~Contractor means a person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is \$500.00 or more.~~

~~"Contractor" includes a construction manager who performs management and counseling services for a construction project for a professional fee.~~

~~Contractor does not include:~~

- ~~(1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;~~
- ~~(2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;~~
- ~~(3) A person who is licensed or registered as a professional and who functions under the control of any licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management or maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work; or~~
- ~~(4) A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in subsection (a) hereof and who employs a full-time registered architect licensed to practice in this State or a registered professional engineer licensed to practice in this State. Employees of such corporation, partnership or sole proprietorship shall also be exempt from the requirements of this article.~~

Contractor means a person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, structure, or excavation associated with a project, development, or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is \$5,000 or more for residential work or \$25,000 or more for commercial work.

Contractor includes a construction manager who performs management and counseling services for a construction project for a professional fee.

Contractor does not include:

- (1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;
- (2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;
- (3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management, and maintenance, who acting in his or her respective professional capacity and any employee of the professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work;
- (4) A pest control operator licensed under the provisions of W. Va. Code § 19-16A-7 to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding \$1,000 on property treated for insect pests;

(5) A corporation, partnership, or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this subsection and who employs full-time a registered architect licensed to practice in this state or a registered professional engineer licensed to practice in this state. Employees of the corporation, partnership or sole proprietorship shall also be exempt from the requirements of this article; or

(6) A person who performs landscaping or painting services for commercial or residential customers.

~~License means a license to engage in business in this City as a contractor.~~

License means a license to engage in business in this state as a contractor in one of the classifications set out in this W. Va. Code Chapter 30, Article 42

Person means an individual, firm, sole proprietorship, partnership, corporation, association or other entity engaged in the undertaking of construction projects or any combination thereof.

Subcontractor means a person who performs a portion of a project undertaken by a principal or general contractor or another subcontractor.

Sec. 768.03. Necessity for license; exemptions.

(a) ~~On or after the effective date of this section, n~~ No person shall engage in this City in any activity any act as contractor or submit a bid to perform work as a contractor, as defined in this article, unless such person holds a valid business license issued by the City and a valid contractor license issued by the state license issued under the provisions of this article. No firm, partnership, corporation, association or other entity shall engage in contracting in this City unless an officer thereof holds a license issued in accordance with ~~pursuant to~~ this article.

(b) Any person to whom a license has been issued by the state under this article shall keep the license or copy thereof posted in a conspicuous position at every construction site where work is being done by the contractor. The contractor's license number shall be included in all contracting advertisements and all fully executed and binding contracts.

(c) Except as otherwise provided in this Code, the following are exempt from licensure:

- (1) Work done exclusively by employees of the United States Government, the State of West Virginia, the County of Monongalia, the City of Morgantown and any governmental subdivision or agency thereof;
- (2) The sale or installation of a finished product, material or article or merchandise which is not actually fabricated into and does not become a permanent fixed part of the structure;
- (3) Work performed personally by an owner or lessee of real property on property the primary use of which is for agricultural or farming enterprise;
- (4) A material supplier who renders advice concerning use of products sold and who does not provide construction or installation services;
- (5) Work performed by a public utility company regulated by the West Virginia Public Service Commission and its employees;

- (6) Repair work contracted for by the owner of the equipment on an emergency basis in order to maintain or restore the operation of such equipment;
- (7) Work performed by an employer's regular employees, for which the employees are paid regular wages and not a contract price, on business property owned or leased by the employer;
- (8) Work personally performed on a structure by the owner or occupant thereof; and
- (9) Work performed when the specifications for such work have been developed or approved by engineering personnel employed by the owner of a facility by registered professional engineers licensed pursuant to the laws of this State when the work to be performed because of its specialized nature or process cannot be reasonably or timely contracted for within the general area of the facility.

Sec. 768.04. City license permit issuance and fees.

No building permit will be issued to a contractor, and no work as a contractor may be performed by any contractor, unless the contractor has submitted to the City proof of a valid state contractor license and the contractor also has a valid business license issued by the City.

- ~~(a) A person desiring to be licensed as a contractor under this article shall submit evidence that he or she holds a valid West Virginia State contractor's license and an application to the City, on such forms as the City may require.~~
- ~~(b) No license shall be issued or renewed and no building permit shall be granted unless the contractor's City business and occupation taxes have been paid for the previous year.~~
- ~~(c) Upon the City's approval of the application for a contractor's license, a license fee which shall be of the same amount as that established by the West Virginia Contractor's Licensing Board, pursuant to Section 21-11-8 of the West Virginia Code, shall be paid to the City, whereupon the license shall be issued. The above fee, subject to adjustments by the West Virginia Contractor's Licensing Board, shall be paid each year that the contractor seeks to conduct business within the City. Contractor's licenses shall be valid for a period of one year beginning July 1 of each year. Any license which is not renewed prior to expiration may be reissued within one year by the payment of the regular annual renewal fee plus a late payment fee of \$25.00. Any license which lapses for a period of one year or more shall be reissued as an initial license and subject to fees for same. Fees for initial licensing shall be prorated semiannually.~~
- ~~(d) No license issued hereunder shall be transferable. A contractor shall not be issued a building permit unless he possesses a valid City contractor's license.~~

Sec. 768.05. Unlawful use, assignment or transfer of license.

No license may be used for any purpose by any person other than the person to whom the license is issued. No license may be assigned, transferred or otherwise disposed of so as to permit the unauthorized use thereof.

Sec. 768.06. Prerequisites to obtaining building permit.

Any person making application to the City Municipality for the construction of any building, highway, sewer or structure or for any removal of materials or earth, grading or improvement, shall, before issuance of the permit, either furnish satisfactory proof that such person is duly licensed under the provisions of this article to carry out or superintend the same, or file a written affidavit with the Municipality that such person is not subject to licensure as a contractor or subcontractor as defined in this article. A building permit shall not be issued to any person who does not possess a valid contractor's license and valid business license when required by this article.

Sec. 768.07. Article supplemental ~~supersedes other provisions.~~

The provisions of this article are supplemental to any requirements in any other provisions of the City Code or state law, and compliance with this Article shall not excuse compliance with any other provision. ~~shall supersede any conflicting provisions contained in the Codified Ordinances.~~

Sec. 768.08. Stop work order.

If the City Building Official-Inspector or other duly authorized authority determines that a contractor is working within the City without a valid contractor license or business license, he or she may immediately issue a stop work order and post such order on the premises where the contractor is working.

Sec. 768.99. Penalty.

The criminal penalty for the violation of this article shall be not more than \$500.00. Each day of violation shall be considered a separate violation.

This ordinance shall be effective upon adoption; provided, however, that the validity of any contractor license issued pursuant to Article 768 prior to the effective date of this ordinance shall not be affected by the passage hereof, and such contractor license shall be effective for the purposes identified pursuant to the provisions of Article 768 in effect prior to the date of this ordinance during the period for which such contractor license is valid.

FIRST READING: _____

Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED: _____