

**AN ORDINANCE AMENDING AND REENACTING A PRIOR CITY
ORDINANCE ESTABLISHING A SALES AND USE TAX**

The City of Morgantown hereby ordains that Article 733 of the City Code entitled “Sales and Use Tax” is hereby amended and re-enacted to provide as follows:

733.01. Findings.

(a) On or about October 6, 2014, the Municipal Home Rule Board approved the City of Morgantown Municipal Home Rule Pilot Program Application and granted The City of Morgantown authority to adopt municipal sales and service tax and a municipal use tax pursuant to West Virginia Code section 8-1-5a without such tax being subject to the restrictions imposed by West Virginia Code Chapter 8, Article 13C.

(b) The City finds and concludes that the sales and service tax and use tax set forth in this Article is adopted consistent with the City’s Home Rule Plan and incorporates the provisions of the Code of West Virginia, 1931, as amended, relating to the imposition, administration, collection, and enforcement of the State consumer sales and service tax codified in W. Va. Code §§ 11-15-1 et seq. and the State use tax codified in W. Va. Code §§ 11-15B-1 et seq. and that adoption of these provisions 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.

(c) The City finds and concludes that, in consideration of the foregoing findings, this Article shall be construed to accomplish the purposes stated in this Section.

733.02. 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 West Virginia Code Chapter 11, Articles 9, 10, 15, 15A, and 15B, as they may be amended.

(b) The following terms have the meanings given for purposes of this Article:

(1) “Business” means 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” means The City of Morgantown, West Virginia.

(3)

“Code of West Virginia,” “West Virginia Code,” 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 the State of West Virginia 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 the term “Sale 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 West Virginia Code Chapter 11, Article 15B.

(9)

“Sales and use taxes” means the taxes imposed by Sections 733.03 and 733.04 of this Article.

(10)

“Sales price” has the meaning ascribed to that term in West Virginia Code Chapter 11, Article 15B, and shall be construed in accordance with that article, as it may be amended.

(A) “Sales price” means the measure subject to the tax levied under West Virginia Code Chapter 11, Article 15 or 15A, or this Article, and includes the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (i) The seller’s cost of the property sold;
- (ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller and any

other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges; and

(v) Installation charges.

(B) “Sales price” does not include:

(i) Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing and carrying charges from credit extended on the sale of personal property, goods or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; or

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

(C) _____ “Sales price” shall include consideration received by the seller from third parties if:

(i) _____
The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a preferred customer card that is available to any patron does not constitute membership in such a group); or

The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

_____ (11) “Sales tax” means the tax levied by Section 733.03 of this Article.

_____ (12) “Service” or “selected service” have the meaning ascribed to those terms in West Virginia Code Chapter 11, Article 15B.

_____ (13) “State sales tax” means the tax levied by West Virginia Code Chapter 11, Article 15.

_____ (14) “State use tax” means the tax levied by West Virginia Code Chapter 11, Article 15A.

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(15)

“Tax” means the taxes imposed by this Article and includes addition to tax, interest, and penalties levied under West Virginia Code Chapter 11, Article 10.

(16)

“Tax Commissioner” means the Chief Executive Officer of the Tax Division of the Department of Revenue of the State of West Virginia, 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 733.04 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 the City.

(20) “Use tax” means the tax imposed by Section 733.04 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.

733.03. Imposition of Municipal Sales and Service Tax.

(a) For the privilege of selling tangible personal property or custom software and for the privilege of furnishing certain selected services, a vendor doing business in the City shall collect from the purchaser a tax upon the sale of tangible personal property, custom software and the results of taxable services 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 West Virginia Code Chapter 11, Article 15 are paid to the Tax Commissioner.

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(b) The rate of the tax imposed by this Section shall be one percent of the Sales Price, as defined in this Article, of the tangible personal property, custom software, or taxable service purchased or leased.

733.04. Imposition of Municipal Use Tax.

(a) An excise tax is hereby levied and imposed on the use in the City of tangible personal property, custom software, and the result 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 West Virginia Code Chapter 11, Articles 15A and 15B, and remitted to the Tax Commissioner.

(b) The rate of tax shall be one percent of the Purchase Price, as defined in this Article, of the tangible personal property, custom software, or taxable service used within the City.

733.05. Calculation of Tax on Fractional Parts of a Dollar.

The tax computation under Sections 733.03 and 733.04 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.

733.06. State and Local Tax Bases.

The taxable bases of the taxes imposed by Sections 733.03 and 733.04 of this Article shall be identical to the sales and use tax bases of this State except as provided in Section 733.07 of this Article, unless otherwise prohibited by federal law, as required by *W. Va. Code* § 11-15B-34.

733.07. Exceptions.

The taxes imposed by this Article do not apply in the following defined instances:

- (1) the sale or use of motor fuel, as defined in West Virginia Code Chapter 11, Article 14C;
- (2) the sale or use of motor vehicles upon which a tax is imposed by West Virginia Code Chapter 11, Article 15, Section 3c;
- (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 733.03 of this Article does not apply to any transaction that is exempt from the tax imposed by West Virginia Code Chapter 11, Article 15;
- (5) The use tax imposed by Section 733.04 of this Article does not apply to any purchase upon which the sales tax imposed by Section 733.03 of this Article has been paid.

733.08. Credit Against Municipal Tax.

(a) A person is entitled to a credit against the use tax imposed by Section 733.04 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 a 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 733.04 on the use of the tangible personal property, custom software, or results of the taxable service in the City.

(b) For purposes of this Section 733.08, the following terms have the meanings given:

(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 733.08(c), “state” includes the fifty states of the United States and the District of Columbia but does not include any of these several territories organized by Congress.

733.09. 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 consumer sales and service tax imposed by West Virginia Code Chapter 11, Article 15; the state use tax imposed by West Virginia Code Chapter 11, Article 15A; the public utility tax imposed by the City pursuant to West Virginia Code Chapter 8, Article 13, Section 5a; the amusement tax imposed by the City pursuant to West Virginia Code Chapter 8, Article 13, Section 6; the tax on sales of alcoholic liquors and wine imposed by the City pursuant to West Virginia Code Chapter 8, Article 13, Section 7; the hotel occupancy tax imposed by the City pursuant to West Virginia Code Chapter 7, Article 18; and the special district excise taxes imposed by a county pursuant to West Virginia Code Chapter 7, Article 22, or by a municipality pursuant to West Virginia Code Chapter 8, Article 38, if any.

733.10. Local Rate and Boundary Database; Changes.

(a) The Tax Commissioner is required by W. Va. Code § 11-15B-35 to maintain a database for all

jurisdictions levying a sales or use tax in this State. The City Clerk 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 an area outside

the 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 and remit the tax imposed by Section 733.03.

(b) Whenever the boundaries of the City change, the City Clerk shall promptly notify the Tax Commissioner of the change in a writing including the following: (i) the nine-digit zip code or codes for the area added or removed, (ii) any other information the Tax Commissioner may require to maintain the database. After the submission of the rate and boundary database in order to implement the taxes imposed under this Article, an act of Council annexing property into the City or removing property from the City shall provide that the boundary change may not take effect any sooner than the first day of a calendar quarter that begins sixty days after the City provides written notice to the Tax Commissioner 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.

733.11. 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 the 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 authorized by law for collecting, enforcing, and administering taxes retained under this Article, in the subaccount for the City established in the "Municipal Sales and Service Tax and Use Tax Fund," an interest-bearing account created in the state treasury pursuant to *W. Va. Code* § 8-13C-7. All funds collected and deposited in the subaccount for the City shall be remitted at least quarterly by the State Treasurer to the City's Finance Director, as provided in *W. Va. Code* § 8-13C-7.

733.12. Administrative procedures.

(a) The provisions of the West Virginia Tax Procedure and Administration Act set forth in West Virginia Code Chapter 11, Article 10, apply to the administration, collection, and enforcement of the taxes imposed pursuant to this Article, except as otherwise expressly provided in West Virginia Code Chapter 8, Article 13C, with like effect as if that article were applicable only to the taxes imposed by this Article and were fully set forth in this Article.

(b) The Finance Director shall have the authority to adopt and implement such other and additional regulations, not inconsistent with Paragraph (a), as are appropriate for the administration, interpretation, and enforcement of this Article, including provision for administering the funds deposited in the special revenue fund created by this Article. Such regulations shall not impair or interfere with the authority and responsibility of the State Tax Commissioner for administering, collecting, and enforcing the tax obligations established by this Article.

733.13. Criminal penalties.

The provisions of the West Virginia Tax Crimes and Penalties Act, set forth in West Virginia Code Chapter 11, Article 9, applies to the administration, collection and enforcement of the taxes imposed by this Article with like effect as if that act were applicable only _____ to _____ the taxes imposed pursuant to this Article and were fully set forth in this Article; 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 violation of the ordinances of the City.

733.14. Automatic updating.

Any amendment to the provisions of the West Virginia Code currently codified at Chapter 11, Articles 9, 10, 15, 15A, or 15B shall automatically apply to the taxes imposed by this Article, to the extent the amendments are applicable.

733.15. Deposit of Tax Collected in Special Revenue Fund.

(a) _____
There is hereby established a special revenue fund of the City which is designated the "City Sales and Use Tax Fund." The City Sales and Use Tax Fund shall consist of the following:

(1) _____
All revenue received from collection of the taxes imposed by this Article, including any interest, additions to tax, and penalties deposited with the City's Finance Director;

(2) All appropriations to the fund;

(3) _____

All interest earned from investment of the fund; and

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(4) Any gifts, grants, or contributions accepted by the City and deposited in the fund.

(b) Funds in the City Sales and Use Tax Fund shall not be treated by any person as general revenue of the City, except as provided herein. Revenues in the City Sales and Use Tax Fund shall be disbursed in the manner, and consistent with the purposes, set forth in Paragraph (c) of this Section.

(c) Funds in the City Sales and Use Tax Fund shall be used as follows (the following purposes shall be of equal priority with no one purpose having priority over another with respect to use of funds in the City Sales and Use Tax Fund):

(1) Twenty-five percent of such funds shall be allocated for recreational facilities and services operated or maintained by the Board of Park and Recreation Commissioners of Morgantown, West Virginia ("BOPARC"), including without limitation the construction of capital improvements, construction of facilities, and acquisition of property, fixtures and equipment for recreational purposes, solely or jointly with other entities or agencies, including without limitation associated retail and service facilities that are directly related to, and used in conjunction with, recreational facilities operated by BOPARC, and including satisfying the debt service requirements each fiscal year on any bonds or other repayment obligations issued either directly by the City or issued by the Morgantown Building Commission, the Morgantown Land Reuse and Preservation Agency, or other entity created by the City which has issued bonds or other repayment obligations to finance the construction or improvement of such recreational facilities which are being leased by such entity to the City or to BOPARC, for which the City Sales and Use Tax Fund is either dedicated or planned to be budgeted as the payment source, including any refunding bonds issued by the City or any of such other entities to refinance bonds or other repayment obligations previously issued to pay for such recreational facilities;

(2) Twenty-five percent of such funds shall be allocated for the purpose of reducing the unfunded actuarial accrued liability of the City Police pension fund and Firefighter pension fund, including satisfying the debt service requirements each fiscal year on any pension funding revenue bonds issued by the Morgantown Building Commission for the purpose of funding all of the then unfunded actuarial accrued liability of the City Police pension fund and/or Firefighter pension fund;

(3) Twenty-five percent of such funds shall be allocated for the purpose of capital improvement projects within the City, including satisfying the debt service requirements each fiscal year on any bonds or other repayment obligations issued either directly by the City or issued by the Morgantown Building Commission, the Morgantown Land Reuse and Preservation Agency, or other entity created by the City which has issued bonds or other repayment obligat

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including any refunding bonds issued by the City or any of such other entities to refinance bonds or other repayment obligations previously issued to pay for such capital improvement projects; and

(4) Twenty-five percent of such funds shall be allocated, at the discretion of Council, for any or any combination of the following purposes:

(i) Supplementation of the allocation of funds for recreational facilities and services operated or maintained by BOPARC including repayment of obligations issued for such purpose as set forth in subsection (c)(1) of this section;

(ii) Supplementation of the allocation of funds to reducing the unfunded actuarial accrued liability of the City Police pension fund and Firefighter pension fund including repayment of obligations issued for such purpose as set forth in subsection (c)(2) of this section;

(iii) Supplementation of the allocation of funds for capital improvement projects within the City including repayment of obligations issued for such purpose as set forth in subsection (c)(3) of this section; and

(iv) Supplementation of the City General Revenue Fund or Account.

733.16. Issuance of revenue bonds.

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 (hereinafter, the "Bond Act") for the purposes of financing or refinancing costs which are described in 733.15(c) above, to fund reserve funds established in connection with the issuance of such obligations, if any, to pay capitalized interest, if any, on such obligations and to pay costs of issuance of such obligations and related costs. The City may pledge or otherwise utilize the collections of the 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, any prior debt service requirements, to fund or replenish any required reserves and pay any other costs in accordance with the requirements for any bonds or other obligations issued or to be issued by the City from time to time, including any refunding bonds, to finance or refinance costs described in 733.15(c) above and as described in this section, and/or to make lease payments which repay the debt service or otherwise secure bonds or other obligations issued by other entities created by the City to finance or refinance costs described in 733.15(c) above and other costs described in this section. The City may utilize the procedures established pursuant to the Bond Act in connection with the issuance of such bonds or other repayment obligations and in connection therewith it is hereby clarified and directed that the taxes imposed by this Article shall not be considered taxes imposed solely for the purposes of, and as contemplated by, West Virginia Code Chapter 8, Article 16.

733.17. Severability.

If any provision of this Article, or the application of this Article to any person or circumstance, is found invalid by a person or entity having jurisdiction to make such determination, such invalidity shall not affect the validity or application of other provisions of this Article which can be given effect without the inclusion of the provision invalidated. To this end, the provisions of this Article shall be construed as severable. The City Council finds and declares that it would have adopted this Article irrespective of the invalidity of any particular provision hereof and intends that any portion deemed invalid should be severed and the balance of the Article given effect and enforced without regard to the invalid provision.

733.18. Effective Date.

(a) _____
This Article shall become effective upon adoption.

(b) _____
The imposition and collection of the taxes imposed by this Article was suspended until July 1, 2020, as required by the legislative rule codified in West Virginia Code of State Rules Title 110, Series 28.

733.19. Notification to Tax Commissioner.

Upon original adoption of this Article by City Council, the City Clerk sent to the Tax Commissioner (i) a certified copy of the ordinance adopting this Article, (ii) the rate and boundary data base required by this Article, (iii) a description of the boundaries of the City, and (iv) other information reasonably required by the Tax Commissioner to administer, collect, and enforce the taxes imposed by this Article.

This ordinance is effective upon adoption.

First Reading: _____

Mayor

Second Reading: _____

City Clerk

Adopted: _____

Filed: _____

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