

CODIFIED ORDINANCES OF BRIDGEPORT

PART SEVEN - BUSINESS REGULATION AND TAXATION CODE

CHAPTER ONE - Business Regulation

Art. 705. Transient Merchants; Peddlers and Solicitors.

CHAPTER THREE - Taxes and Service Charges

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Art. 737. Business and Occupation Tax.

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CODIFIED ORDINANCES OF BRIDGEPORT
PART SEVEN - BUSINESS AND TAXATION CODE

CHAPTER ONE - Business Regulation
Art. 705. Transient Merchants; Peddlers and Solicitors.

ARTICLE 705
Transient Merchants; Peddlers and Solicitors

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CROSS REFERENCES

	Solicitation of charitable funds - see W. Va. Code	Art. 29-19
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24 et seq.	Trespass - see GEN. OFF. 533.02	

705.01 DEFINITIONS.

For the purposes of this article, except Section 705.12, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (a) "Canvasser" or "solicitor" means any individual, whether a resident of the City or not, traveling either by foot, wagon, automobile, motor truck or any other type of conveyance from place to place, from house to house or from street to street, taking or attempting to take orders for sale of goods, wares, merchandise, personal property of any nature whatsoever for future delivery or for the services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not; provided, that such definition shall include any person who, for himself, or for another person, hires, leases, uses or occupies any building, structure, tent, railroad car, boat, hotel room, lodging house, apartment, shop or any other place within the City for the sole purpose of exhibiting samples and taking orders for future delivery.
- (b) "Peddler" and "huckster" mean any person, whether a resident of the City or not, traveling by foot, wagon, automobile, vehicle or any other type of conveyance from place to place, house to house or from street to street carrying, conveying or transporting goods, wares, merchandise, meat, fish, vegetables, fruits, garden, truck farm products or provisions offering and exposing the same for sale, or barter, actually selling or bartering, and delivering articles to purchasers or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, railroad car or other vehicle or conveyance; and further provided, that one who solicits orders and as a separate transaction, makes deliveries to purchasers, as a part of a scheme or design to evade the provisions of this article shall be deemed a peddler within the provisions of this article, except that nothing in this section shall be construed as levying a license tax on an agent or traveling salesman of a manufacturer or wholesaler who may directly supply articles manufactured or handled by such manufacturer or wholesaler to customers engaged in merchandising at retail at bona fide, fixed and stationary places of business.
- (c) "Itinerant vendor" includes all persons who engage or conduct within this City a temporary or transient business of selling goods, wares and merchandise out of current stock or orders for future delivery, and who for the purpose of carrying on such business, use, lease or occupy either in whole or in part a room, building or other structure, or who use, lease or occupy for such purposes a room in any hotel or lodging house, for the exhibition and sale of such goods, wares and merchandise; and the person so engaged shall not be relieved from the provisions of this section by reason of association temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as a part of, or in the name of, any local dealer, trader, merchant or auctioneer. The provisions of this

section shall not apply to sales made to persons by commercial travelers, or selling agents in the usual course of business; nor to hawkers or peddlers in the streets, roads or highways, from packs or vehicles, nor to persons selling meat or the products of the farm, garden or dairy; nor to any sales of goods, wares or merchandise on the grounds of any agriculture association during the continuance of any annual fair held by such association; nor to any sales by societies acting for charitable, religious or benevolent purposes; nor to judicial sales directed by law, or under the orders of any court; nor to the sales of the common necessities of life in any public market place.

(Ord. 7-88. Passed 5-24-88.)

705.02 LICENSE REQUIRED.

No transient merchant, itinerant merchant or itinerant vendor, or a solicitor or canvasser, or a huckster or peddler, as defined in Section 705.01, except when exempted, shall engage in such business within the City without first obtaining a license therefor in compliance with the provisions of this article.

(Ord. 7-88. Passed 5-24-88.)

705.03 ITINERANT VENDORS.

The annual license fee to carry on the business of itinerant vendor shall be fifteen dollars (\$15.00).

(Ord. 7-88. Passed 5-24-88.)

705.04 HAWKERS AND PEDDLERS.

No person without a City license therefor, shall act as a hawker or peddler within the City. If the person or persons travel without a vehicle, the annual license fee shall be ten dollars (\$10.00); if he travels with a vehicle of not more than one-half ton capacity, fifteen dollars (\$15.00); if he travels with a vehicle of not more than one ton capacity, fifty dollars (\$50.00); and if he travels with a vehicle of more than one ton capacity, but not exceeding two tons capacity, one hundred dollars (\$100.00); if he travels with a vehicle of more than two tons capacity, one hundred fifty dollars (\$150.00) plus one hundred dollars (\$100.00) for each additional ton or fraction thereof.

(Ord. 7-88. Passed 5-24-88.)

705.05 LICENSE EXEMPTIONS.

The following persons are hereby exempt from the provisions of Sections 705.03 and 705.04:

- (a) Any person that is organized and operated exclusively for religious, educational, philanthropic, benevolent, fraternal or charitable purposes not operated for pecuniary profit, where not part of the net earning enures to the benefit of any person, shareholder or individual, or where the solitations, sale or delivery shall be conducted within an organization and only among the members thereof.
- (b) Any person defined in this article who is employed by or represents a business, firm or corporation which is located within the City limits, who is otherwise licensed under the general store licensing provisions of the City.

(Ord. 7-88. Passed 5-24-88.)

705.06 LICENSE APPLICATION; FEE.

An applicant for license under this article shall file a written application with the Director of Finance, signed by the applicant, if an individual, by one of the partners, if a partnership, or by one of the officers, if a corporation, showing:

- (a) The name of the person having the management or supervision of applicant's business during the time it is proposed that it will be carried on in the City.
- (b) The local address of such person while engaged in such business.
- (c) The permanent address of such person.
- (d) The capacity in which such person will act, that is, whether as proprietor, agent or otherwise.
- (e) The name and address of the person for whose account the business will be carried on if any.
- (f) If a corporation under the laws of what state the same is incorporated.
- (g) The place in the City where it is proposed to carry on applicant's business, and the length of time during which it is proposed that such business shall be conducted. The length or term for lease, if any.
- (h) A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by applicant in the City.
- (i) Whether or not the person having management or supervision of the applicant's business has been convicted of a crime, misdemeanor or violation of any municipal ordinance, the nature of such events and the punishment assessed therefor.
- (j) A history of the business, if deemed necessary.
- (k) Credentials from the person for which the applicant proposes to do business, authorizing the applicant to act as such representative.
- (l) Such other reasonable information as to identify the character of the person having the management or supervision of applicant's business or the method or plan of doing such business as the Director of Finance may deem proper to fulfill the purposes of this article and the protection of the public good.
(Ord. 7-88. Passed 5-24-88.)

705.07 PRORATION OF LICENSE FEE PROHIBITED.

No license fee shall be prorated by the Director of Finance.
(Ord. 7-88. Passed 5-24-88.)

705.08 INVESTIGATION OF APPLICANT; ISSUANCE OF LICENSE.

(a) Upon receipt of an application for a license, the Director of Finance may cause an investigation to be made of the applicant's business and moral character. In carrying out such investigation, the Director of Finance may consult with the Chief of Police.

(b) If, as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Director of Finance shall deny the application and refuse the issuance of the license. If, as a result of such investigation, the applicant's character or business responsibility is found to be satisfactory, the Director of Finance shall issue a license to the applicant for carrying on the business as indicated, upon and after the payment of the license fees set forth in this article.

(Ord. 7-88. Passed 5-24-88.)

705.09 LICENSE REVOCATION.

(a) The licenses issued under or pursuant to this article may be revoked by the Director of Finance for any of the following causes:

- (1) Any fraud, misrepresentation or false statement contained in application for license.
- (2) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares and merchandise.
- (3) Any violation of this article.
- (4) Conviction of the licensee of any felony or misdemeanor involving moral turpitude by conducting the business licensed under this article in an unlawful manner such as to constitute a breach of the peace or constitute a menace to the health, safety or general welfare of the public.
- (5) Failure of any licensee to pay the City business and occupation tax when due and payable.

(b) Notice of hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place for hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address, at least five days prior to the date of hearing.

(c) The decision of the Director of Finance shall be final.
(Ord. 7-88. Passed 5-24-88.)

705.10 DIRECTOR OF FINANCE AS ATTORNEY-IN-FACT; SERVICE OF PROCESS.

Before any license shall be issued for engaging in business as a huckster or peddler, solicitor or canvasser or itinerant merchant, such applicant shall file with the Director of Finance an instrument nominating and appointing the Director of Finance or the person performing the duties of such position, his true and lawful attorney-in-fact, with the power and authority to accept service of process for and on behalf of the applicant in respect to any matters connected with or arising out of the business transacted under the license. Such instrument shall contain recitals to the effect that the applicant for the license consents and agrees that service of any notice or process may be made upon the Director of Finance as attorney-in-fact and when so made, shall be taken and held to be valid as if personally served upon the person applying for the license under this article, according to the law of this or any other state, and waiving all claim or right of error by reason of such acknowledgment of service or manner of service. Immediately upon service of process upon the Director of Finance as herein provided, the Director of Finance shall send to the licensee at his last known address by registered mail, a copy of the process.
(Ord. 7-88. Passed 5-24-88.)

705.11 POSTING OF LICENSE.

The license issued under this article shall be posted conspicuously in a place of business in the case of transient merchants, itinerant merchants and itinerant vendors; or in some other conspicuous place in the instance of a solicitor, canvasser, huckster or peddler.
(Ord. 7-88. Passed 5-24-88.)

705.12 HOME SOLICITATION; HOURS.

(a) Definitions. As used in this section:

- (1) "Solicit" and "solicitation" includes any one or more of the following activities:
 - A. Selling or offering for sale, or taking or attempting to take orders for the sale of goods or services of any kind, character or description, primarily for personal, family or household purposes.
 - B. Selling or offering for sale, or taking or attempting to take orders for books, magazines, periodicals, newspapers and every other type or kind or publication.
 - C. Requesting directly or indirectly contributions on the plea or representation that such contributions will be used for a charitable or religious purpose, where any such sale, offer, taking, attempt or request is personally solicited or consummated in or upon the premises of an actual or prospective customer or donor. A home solicitation as defined herein shall be deemed completed when made, whether or not the same makes any sale or receives any contribution.
- (2) "Charitable" includes the words patriotic, philanthropic, social service, welfare, benevolent, educational, civic or fraternal, either actual or purported.
- (3) "Religious" shall not include the word charitable as herein defined, but shall be given its commonly accepted definitions.
- (4) "Contributions" includes the words alms, food, clothing, money, property, financial assistance or other things of value. A contribution as defined herein also includes a sale or offer to sell any book, card, magazine, membership, merchandise, subscription, ticket, or other thing in connection with which an appeal is made for any charitable or religious purpose.
- (5) "Person" means any individual, firm, partnership, corporation, company, association, church, religious sect, religious denomination, society, organization or league.
- (6) "Premises" means a building or portion of a building used for residential purposes including real estate upon which any building is located, provided that the predominant use of the real estate is for residential purposes.

(b) Prohibited Practices. There shall be no solicitation upon any premises, other than upon prior invitation of the occupant of any such premises, prior to 9:00 a.m. or after 8:00 p.m. local time, of any day, except that from the last Sunday in April to and including the last Saturday in October of each year, solicitation is permitted until 9:00 p.m., local time, of any day. (Ord. 7-88. Passed 5-24-88.)

705.13 OTHER TAXES.

The Director of Finance may refuse to issue any license required by this article to any person, firm or corporation delinquent in the payment of any tax or fee due the City under any ordinance or tariff until such delinquent tax or fee is paid. (Ord. 7-88. Passed 5-24-88.)

CHAPTER THREE - Taxes and Service Charges

- Art. 717. Municipal License Tax.
- Art. 721. License Requirements; Penalty. (Repealed)
- Art. 725. Exotic Entertainment Facilities.
- Art. 729. General License Taxes. (Repealed)
- Art. 733. Business Franchise Registration Tax. (Repealed)
- Art. 737. Business and Occupation Tax.
- Art. 739. Public Utility Service Tax.
- Art. 741. Alcoholic Beverages.
- Art. 745. Hotel Occupancy Tax.

ARTICLE 717
Municipal License Tax

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CROSS REFERENCES

Taxation powers - see W. Va. Code 8-13-1 et seq.

License taxes generally - see W. Va. Code 8-13-4; 11-12-4

717.01 LEGISLATIVE FINDINGS; PURPOSE.

Council hereby finds that in order to provide essential Municipal services, City revenue needs require the imposition of the following license taxes upon the businesses and commercial ventures listed in this article.

(Ord. 8-88. Passed 5-24-88.)

717.02 DEFINITIONS.

(a) Except where otherwise defined in this article, businesses, occupations, trades, commercial ventures and terms of art used in Sections 717.14 through 717.27 have those meanings given them in the West Virginia Code, as amended and in force on January 1, 1970.

(b) Except as otherwise defined in this article, terms, phrases, occupations, trades, commercial ventures and terms of art used in sections of this article other than those referred to in subsection (a) hereof shall have the meaning given to them in the West Virginia Code, as amended and currently in force and, when there is more than one such meaning, they shall have the meaning given in the sections of the West Virginia Code imposing any State license tax correlative to the City's license tax.

(c) "Fee" and "tax" may be used interchangeably to refer to the charges imposed under this article.

(d) "Person" includes, wherever the context will permit, not only natural persons, but all other legal entities such as partnerships, corporations, business trusts and the like.

(Ord. 8-88. Passed 5-24-88.)

717.03 PAYMENT AND TERM OF LICENSE.

Except as otherwise specified in this article, the entirety of any license fee designated as an annual fee shall be billed on or about June 1 in each year, and shall be paid within thirty days of the bill being sent. All annual licenses provided for by this article shall be issued for a term of one year beginning on July 1 and ending on the next succeeding June 30. Biennial licenses shall be issued for a term of two years, commencing on July 1 and ending on June 30 two years after the initial license date. Where licenses of other periods are authorized by this article, they shall be of such duration, and shall begin and end on such dates, as the Director of Finance may provide; but the Director of Finance shall select such dates as State law requires, if any, for any correlative State licenses, certificates or permits.

(Ord. 8-88. Passed 5-24-88.)

717.04 FEES TO CONSTITUTE DEBTS DUE THE CITY.

The fees provided for in this article shall constitute debts due to the City and may be collected by the Director of Finance by an appropriate action in either the circuit courts or magistrate courts of West Virginia.
(Ord. 8-88. Passed 5-24-88.)

717.05 APPLICABILITY; NONTRANSFERABILITY.

Except where otherwise expressly provided herein, the fees provided for herein apply to any person undertaking the herein described activities, trades or professions for any part, no matter how small, of a given time period in which the fee is imposed. Except where otherwise expressly provided herein, the licenses provided for in this article are not transferable; that is, the payment by one person of a license fee provided for in this article shall not exempt or excuse a purchaser from, a successor to, or assignee of, any such person from the payment of the prescribed fee for the maintenance or possession of a particular license for the conduct of a particular activity. The licenses provided for herein are nontransferable personal privileges. The fees provided for in this article apply only to persons engaging in the specified acts, having the specified ownership, or carrying on the specified operation or conduct of a trade or business where the foregoing are located within the geographic limits of the City.
(Ord. 8-88. Passed 5-24-88.)

717.06 EFFECT OF IMPOSITION OF LICENSE TAX.

(a) In every case where this article imposes a license tax or fee, it shall be deemed that a license is required to perform the activity at each location within the City and that a license can and must be issued by the Director of Finance with respect to that activity at each location within the City, but only upon payment of the requisite fee and completion of the requisite application. The imposition of a license tax by this article shall mean that the payment of the tax is a prerequisite to the lawful conduct of the activity upon which the tax is imposed, at each location within the City. (Ord. 8-88. Passed 5-24-88.)

(b) Before application for a municipal license to conduct any type of business activity within the corporate municipal limits is granted, the applicant shall provide proof that the business will be located in a permanent structure so designed for the type of business activity with accessible permanent plumbing, electrical, and mechanical facilities necessary as regulated by the State Building Code. Also, it shall be verified that there is the required number of parking spaces located on site. This information shall be in writing and verified by the Municipal Building Official or his duly authorized agent and shall be attached to the application. (Ord. 1-95. Passed 1-30-95.)

717.07 ACTS PROHIBITED.

Whenever a license tax is imposed by this article, no person shall engage in the activity or occupation upon which the fee is levied, nor own or operate any device upon which the fee is levied, without first paying the tax and acquiring the license provided for under this article.
(Ord. 8-88. Passed 5-24-88.)

717.08 EFFECT OF LICENSE.

In any case in which a license is required by this article, the issuance of the license shall be deemed a prerequisite to the lawful conduct of the activity for which the license is required. Issuance of any license under this article shall not, however, make valid or legal any act not otherwise valid or legal or not otherwise authorized by other provisions of law. Nothing in this article shall authorize any act, activity or ownership not otherwise lawful.
(Ord. 8-88. Passed 5-24-88.)

717.09 DUTIES AND POWERS OF DIRECTOR OF FINANCE.

The Director of Finance shall have the power to prepare application forms for any licenses required under this article. The application may contain questions on or blanks for any information reasonably deemed necessary by the Director of Finance. The Director of Finance is expressly authorized to require applicants to have, and to provide evidence of, a valid and existing West Virginia Business Franchise Registration Certificate. Proper completion of an application is a condition precedent to the Director of Finance having any duty to issue a license. Upon proper completion of a license application and payment of the requisite fee, the Director of Finance shall issue the requested license to the applicant. The form of the license and information thereon shall be such as the Director of Finance may reasonably prescribe. The Director of Finance, or his designated agent, shall have the power to examine activities and locations of each business to determine compliance with this article.
(Ord. 8-88. Passed 5-24-88.)

717.10 LICENSE FEES CUMULATIVE.

The license fees imposed in this article are cumulative and the imposition of any one fee does not preclude the imposition of other fees upon any one individual or entity. The fees imposed by this article are imposed for engaging in certain trades or activities, or for the use or possession of certain devices. The pursuit of a particular trade or activity, or the ownership or use of a particular device, shall not excuse a person or entity from the requirement for a license and payment of a license fee for each such activity or device for which, if engaged in or possessed singly, a license requirement and license fee would be imposed.
(Ord. 8-88. Passed 5-24-88.)

717.11 CHANGE IN NAME OR PARTNERS.

A change in the name under which a person does business shall not require the person to seek, any new license for any activity licensed under a prior name; nor shall the withdrawal or addition of partners to a partnership require the partnership to obtain a new license, provided that the partnership always retains at least one partner who was a member of the firm at the time the license was granted.
(Ord. 8-88. Passed 5-24-88.)

717.12 OTHER TAXES.

The Director of Finance may refuse to issue any license required by this article to any person, firm or corporation delinquent in the payment of any tax or fee due the City under any ordinance or tariff until such delinquent tax or fee is paid.
(Ord. 8-88. Passed 5-24-88.)

717.13 DISPLAY OF CERTIFICATE.

The licenses provided for in this article shall be evidenced by license certificates. The holder of a license shall display the license certificate in a prominent place at or near the location of the licensed activity or device, and shall make the license certificate available for inspection by City police, the Director of Finance or his designated agent.
(Ord. 8-88. Passed 5-24-88.)

717.14 FEES FOR OWNING AND OPERATING COIN-OPERATED
AMUSEMENT DEVICES OR VENDING MACHINES.

(a) Persons owning and operating coin-operated merchandise, service, amusement or music devices or vending machines shall obtain annual licenses and pay the fees prescribed in this section.

(b) The liability for the license to operate any type of coin-operated merchandise, service, amusement or music devices or vending machines shall be upon the owner of the machine. The ownership shall be established by either a bill of sale, paid invoice or a conditional sales contract which has been recorded in the applicable county clerk's office. The leasing of such a machine shall not be considered as a transfer of ownership of the machine and where a lessor-lessee relationship exists, the lessor shall be liable for the applicable license and fees.

(c) The annual license fee to own and operate a coin-operated baggage or parcel checking machine or device which is used for the storage of baggage or parcels of any character shall be fifty cents (\$0.50) for each section of any such device which is operated on the coin-in-the-slot principle.

(d) The annual license fee to own and operate any coin-operated toilet locker or device, sanitary napkin device or bed vibrator device shall be fifty cents (\$0.50) for every such locker or device.

(e) The annual license fee to own and operate any coin-operated amusement or music devices, shall be as follows:

(1) Where a person owns fewer than twenty such devices, the fee for each device is:

devices \$ 2.00	For one-cent
devices 5.00	For five-cent
devices 10.00	For ten-cent
requiring more than	For devices
12.50	ten cents

(2) Where a person owns and operates twenty or more such devices, the aggregate fee to the owner is:

devices \$ 50.00	For one-cent
devices 100.00	For five-cent
devices 150.00	For ten-cent
requiring more than ten	For devices
	cents

250.00

The operator of more than one type of device shall pay the highest fee prescribed.

- (3) Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of coins necessary to make the device function.

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(f) The annual license fee to own and operate coin-operated merchandise or service devices shall be as follows:

- | | | |
|--|--|---|
| <p>(1) Where a person owns and operates fewer than twenty such devices, the fee for each device is:</p> <p>devices \$ 2.00</p> <p>devices 5.00</p> <p>devices 10.00</p> <p>requiring more than 12.50</p> | <p>Where a person owns and operates twenty or more such devices, the aggregate annual fee to the owner is:</p> <p>devices \$ 50.00</p> <p>devices 100.00</p> <p>devices 150.00</p> <p>requiring more than ten 250.00</p> | <p>For one-cent</p> <p>For five-cent</p> <p>For ten-cent</p> <p>For devices ten cents</p> <p>For one-cent</p> <p>For five-cent</p> <p>For ten-cent</p> <p>For devices cents</p> |
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The operator of more than one type of device shall pay the highest fee prescribed.

- (3) Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of coins necessary to make the device function.

(g) No license fee shall be required of stores or businesses owning and operating machines or devices described in this section and owned by them in their own licensed stores. Provided however, that where the principal business is the operation of the machines or devices, then the licenses shall be obtained as outlined above.

(h) The provisions of this section shall not be applicable to any pay telephone, postage stamp vending machines or currency changing machines operated on the coin-in-the-slot principle.

(Ord. 8-88. Passed 5-24-88.)

717.15 LAUNDRIES AND CAR WASHES.

Laundries and car washes shall be required to pay an annual license fee as follows:

- 1-5 devices \$ 15.00
- 6-9 devices 3.00 each
- 10 or more devices 30.00

(Ord. 8-88. Passed 5-24-88.)

717.16 CIRCUS, CARNIVALS AND OTHER PUBLIC SHOWS.

(a) The license to exhibit a circus or menagerie, a circus and menagerie combined, wild west show, or other itinerant show not exhibited in a theater, opera house or other permanent place for public shows, shall be based upon the number of railroad cars or motor trucks used to transport the property or equipment of such shows, but not including railroad cars or motor trucks used to transport the personnel thereof.

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(b) If railroad cars are used the fee shall be four dollars (\$4.00) for each car for each day on which any performance is given; if motor trucks are used the fee shall be three dollars (\$3.00) for each truck for each day on which any performance is given.

(c) The license fee to exhibit a street or other carnival shall be five dollars (\$5.00) a week for each entertainment, performance or exhibition given at or in the vicinity of any such carnival. Each such entertainment, performance or exhibition shall require a separate license, whether or not shown under the same canvas and whether or not exhibited for additional compensation; and upon any such entertainment, performance or exhibition being concluded, so that an additional fee for admission is charged, an additional license fee shall be required for any further or additional entertainment, performance or exhibition. To operate any riding device of any kind at or in the vicinity of any street or carnival show, the fee shall be ten dollars (\$10.00) per week for each such device.

(d) To keep or maintain any concession stand selling service, goods, wares or merchandise, such as food, soft drinks, ice cream, candy floss and the like, at or in the vicinity of such street or carnival show, the fee shall be one dollar (\$1.00) a week for each such concession. To maintain any concession stand such as ball games, bingo, cane rack, penny pitch-till-you-win, striking machine, weighing machine, shooting gallery, artful dodger, bumper, fish pond, dart game or other legitimate games of skill, none of which shall be controlled by the operator, at or in the vicinity of any street or carnival show, the license fee shall be five dollars (\$5.00) a week for each such concession. To operate or maintain a candy wheel or any legitimate merchandise wheels, when operated without control of the operator, the license fee shall be twenty-five dollars (\$25.00) a day.

(e) The provisions of this section shall not apply to any educational, literary, dramatic, musical or benevolent society, or volunteer fire companies, not conducted for private profit, where such exhibitions are confined to one county, unless professional or paid talent, other than director, is employed in such exhibitions.
(Ord. 8-88. Passed 5-24-88.)

717.17 TRADING STAMPS.

The annual license fee to sell or offer for sale merchants' trading stamps, premium stamps or certificates of like nature, or to undertake to redeem such stamps or certificates in money or goods, shall be fifty dollars (\$50.00). Provided, however, that this section shall not apply to any coupon or similar device issued and redeemed by a manufacturer or packer.
(Ord. 8-88. Passed 5-24-88.)

717.18 FORTUNETELLERS.

The annual license fee to act as a fortuneteller, palmist, phrenologist, spiritualist, medium, clairvoyant, mindreader or any other person who performs the art or profession of telling the past or forecasting the future shall be two hundred dollars (\$200.00).
(Ord. 8-88. Passed 5-24-88.)

717.19 JUNK DEALERS OR THEIR AGENTS.

(a) Definitions.

- (1) "Junk" as used in this section, means old or scrap gold, copper, brass, rope, rags, batteries, paper, rubber, automobile parts, iron, steel and other old scrap ferrous or nonferrous metals.
- (2) "Junk dealers" includes all persons engaged in the business of buying or selling junk as defined in subsection (a)(1) hereof.
- (3) "Junk dealer's agents" includes all persons who buy or sell junk as defined in subsection (a)(1) hereof for or on behalf of a junk dealer, as defined in subsection (a)(2) hereof, but the term "junk dealer's agent" shall not be construed to include any person regularly employed upon a salary by a regularly licensed junk dealer engaged in such business within the State.
- (4) "Itinerant junk collector" includes only such persons who gather junk from place to place with the aid of a cart or vehicle hand drawn or propelled, who have no fixed place of business.
- (5) "Nonresident junk dealer" or "nonresident junk dealer's agent" includes all persons who act as junk dealers or junk dealer's agents who are nonresidents of the State and all firms so engaged whose members are nonresidents of the State and all corporations which have not been admitted to hold property and transact business in the State.

(b) Fees. The annual license fee to act as a resident junk dealer shall be twenty-five dollars (\$25.00); to act as a junk dealer's agent, ten dollars (\$10.00); to act as a nonresident junk dealer or his agent who buys or solicits for the purchase of junk within the State, one hundred fifty dollars (\$150.00); to act as an itinerant junk collector, two dollars (\$2.00)
(Ord. 8-88. Passed 5-24-88.)

717.20 PAWNBROKERS.

The annual license fee to engage in the business of pawnbroker shall be one hundred dollars (\$100.00). "Pawnbroker" includes any person, firm, partnership, association or corporation engaged in the business of lending money on deposit or pledge of personal property or other valuable thing, other than securities or printed evidence of indebtedness, or in the business of purchasing personal property, such as articles made of or containing gold, silver, platinum or other precious metals or jewels of any description for the purpose of reducing or smelting them into any form different from their condition or construction when purchased and reselling or marketing the product.
(Ord. 8-88. Passed 5-24-88.)

717.21 THEATERS AND PUBLIC SHOWS.

The license fee for the operation of a theater, opera house or other permanent place for public shows shall be forty dollars (\$40.00).
(Ord. 8-88. Passed 5-24-88.)

717.22 COLLECTION AGENCIES.

The annual license fee to engage in the business of a collection agency shall be twenty-five dollars (\$25.00). For the purposes of this section, solicitation by or through an agent shall be considered to be engaging the business of a collection agency.

(Ord. 8-88. Passed 5-24-88.)

717.23 EMPLOYMENT AGENCIES.

The annual license fee to conduct the business of an employment agent, to receive applications for employment, to hire or contract with persons for employment shall be twenty-five dollars (\$25.00).

(Ord. 8-88. Passed 5-24-88.)

717.24 BILLIARD, POOL, BOWLING ALLEYS AND BAGATELLE TABLES.

The annual license fee to keep or maintain a bowling alley, a billiard, pool or bagatelle table, or table of like kind, for public use, where any charge is made for the use of the same, shall be twenty-five dollars (\$25.00); but if more than one of such alleys or tables be kept or maintained in the same building by the same person, the fee shall be fifteen dollars (\$15.00) for each additional one.

(Ord. 8-88. Passed 5-24-88.)

717.25 STORES.

(a) As used in this section:

- (1) "General store" means any store or stores or any mercantile establishment in which goods, wares or merchandise of any kind are purchased, ordered, sold or offered for sale either at retail or wholesale;
- (2) "Person" includes any group or combination acting as a unit, individual, committee, guardian, trustee, executor, administrator, partnership, co-partnership, joint adventure, association, trust, firm or corporation, either domestic or foreign, which is controlled or held with others by majority stock ownership or ultimately controlled or directed by one management or association of ultimate management; and
- (3) "Special store" means any store or stores or any mercantile establishment or establishments, in which goods, wares or merchandise of any kind except cigarettes, tobacco products and soft drinks are purchased, ordered, sold or offered for sale, either at retail or wholesale, and which contains no coin-operated device or devices, owned and operated by the store proprietor.

(b) Every person establishing, operating or maintaining one or more special stores within this City under the same general management, supervision or ownership shall pay the annual license taxes hereinafter prescribed for the privilege of establishing, operating or maintaining such stores:

- (1) For one store, or more, but not to exceed five stores, five dollars (\$5.00) for each store;
- (2) For six stores, or more, but not to exceed ten stores, twenty dollars (\$20.00) for each additional store;

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- (3) For eleven stores, or more, but not to exceed fifteen stores, forty dollars (\$40.00) for each additional store;
- (4) For sixteen stores or more, but not to exceed twenty stores, sixty dollars (\$60.00) for each additional store;
- (5) For twenty-one stores, or more, but not to exceed thirty stores, eighty dollars (\$80.00) for each additional store;
- (6) For thirty-one stores, or more, but not to exceed fifty stores, two hundred dollars (\$200.00) for each additional store;
- (7) For fifty-one stores, or more, but not to exceed seventy-five stores, four hundred dollars (\$400.00) for each additional store;
- (8) For each store in excess of seventy-five, five hundred dollars (\$500.00) for each additional store.

(c) Every person establishing, operating or maintaining one or more general stores within this City under the same general management, supervision or ownership shall pay the annual license taxes hereinafter prescribed for the privilege of establishing, operating or maintaining such stores:

- (1) For one store, or more, but not to exceed five stores, fifteen dollars (\$15.00) for each store;
- (2) For six stores, or more, but not to exceed ten stores, forty dollars (\$40.00) for each additional store;
- (3) For eleven stores, or more, but not to exceed fifteen stores, eighty dollars (\$80.00) for each additional store;
- (4) For sixteen stores, or more, but not to exceed twenty stores, one hundred twenty dollars (\$120.00) for each additional store;
- (5) For twenty-one stores, or more, but not to exceed thirty stores, one hundred sixty dollars (\$160.00) for each additional store;
- (6) For thirty-one stores, or more, but not to exceed fifty stores, four hundred dollars (\$400.00) for each additional store;
- (7) For fifty-one stores, or more, but not to exceed seventy-five stores, eight hundred dollars (\$800.00) for each additional store;
- (8) For each store in excess of seventy-five, one thousand dollars (\$1,000) for each additional store.

(d) The establishment, operation or maintenance of stores by the following shall be exempt from the license tax imposed by this article.

- (1) The United States of America, the State of West Virginia and its political subdivisions;
- (2) Religious and charitable organizations;
- (3) Any person or persons engaged within this State in the business of producing agricultural products who, individually or collectively, sell in such store only agricultural products which he or they have produced.
(Ord. 8-88. Passed 5-24-88.)

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717.26 FEES FOR CERTAIN TRADES, PROFESSIONS OR OCCUPATIONS.

(a) Unless otherwise indicated below, there shall be a license tax imposed, on an annual basis, upon each person practicing in the following trades, professions or occupations within the City. The fees shall be in the amounts listed below, and shall enable the payor to purchase a license to engage in the trade, profession or occupation for one year unless some other fee period is indicated, in which case the fee will purchase a license for that period.

- (1) For architects, a fee of twenty-five dollars (\$25.00);
- (2) For attorneys, a fee of five dollars (\$5.00);
- (3) For auctioneers, a fee of fifteen dollars (\$15.00);
- (4) For barbers, beauticians and manicurists, a fee of fifteen dollars (\$15.00);
- (5) For chiropractors, a fee of twenty-five dollars (\$25.00);
- (6) For dentists, a fee of twenty dollars (\$20.00);
- (7) For embalmers, a fee of one dollar (\$1.00);
- (8) For engineers, a fee of twenty-five dollars (\$25.00);
- (9) For foresters, a fee of five dollars (\$5.00);
- (10) For funeral directors, a fee of one dollar (\$1.00);
- (11) For landscape architects, a fee of twenty-five dollars (\$25.00);
- (12) For land surveyors, a fee of twenty dollars (\$20.00);
- (13) For insurance brokers, a fee of ten dollars (\$10.00);
- (14) For midwives, a fee of ten dollars (\$10.00);
- (15) For nursing home administrators, a fee of twenty-five dollars (\$25.00);
- (16) For occupational therapists, a fee of five dollars (\$5.00);
- (17) For osteopathic physicians and surgeons, a fee of ten dollars (\$10.00);
- (18) For physical therapists, a fee of twenty-five dollars (\$25.00);
- (19) For physicians, surgeons and podiatrists, a biennial fee of fifty dollars (\$50.00);
- (20) For practical nurses, a fee of five dollars (\$5.00);
- (21) For private detectives and investigators, a fee of twenty-five dollars (\$25.00);
- (22) For psychologists, a biennial fee of thirty dollars (\$30.00);
- (23) For radiologic technologists, a fee of twenty dollars (\$20.00);
- (24) For real estate brokers, a fee of twenty-five dollars (\$25.00);
- (25) For real estate salesmen, a fee of ten dollars (\$10.00);
- (26) For registered professional nurses, a fee of five dollars (\$5.00);
- (27) For social workers, a fee of five dollars (\$5.00);
- (28) For veterinarians, an annual fee of five dollars (\$5.00).

(Ord. 8-88. Passed 5-24-88.)

717.27 HEARING AID FITTERS.

Any person (natural or artificial) engaged in the practice of dealing in or fitting hearing aids shall be required to pay an annual license fee of fifteen dollars (\$15.00).

(Ord. 8-88. Passed 5-24-88.)

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717.28 DENTAL CORPORATIONS.

An annual license fee of fifty dollars (\$50.00) is imposed on each dental corporation for the privilege of doing business.

(Ord. 8-88. Passed 5-24-88.)

717.29 FUNERAL ESTABLISHMENTS.

An annual license fee of fifty dollars (\$50.00) is hereby imposed upon each funeral establishment doing business within the City.

(Ord. 8-88. Passed 5-24-88.)

717.30 MEDICAL CORPORATIONS.

An annual license fee of fifty dollars (\$50.00) is hereby imposed upon each medical corporation doing business within the City.

(Ord. 8-88. Passed 5-24-88.)

717.31 NURSING HOMES AND PERSONAL CARE HOMES.

Upon nursing homes, there is imposed a license fee equal to four dollars (\$4.00) for each patient bed; upon personal care homes, there is imposed a license fee equal to two dollars (\$2.00) per bed.

(Ord. 8-88. Passed 5-24-88.)

717.32 HOSPITALS.

Upon each hospital there is imposed an annual license fee in an amount varying in accord with the following table:

- (a) For hospitals with 4-49 beds, a fee of twenty dollars (\$20.00);
- (b) For hospitals with 50-99 beds, a fee of thirty dollars (\$30.00);
- (c) For hospitals with 100-199 beds, a fee of forty dollars (\$40.00);
- (d) For hospitals with 200 or more beds, a fee of fifty dollars (\$50.00).

(Ord. 8-88. Passed 5-24-88.)

717.33 HOTELS, MOTELS AND BOARDING HOUSES.

Upon every hotel, motel and boarding house, there is imposed an annual license fee of two dollars (\$2.00) and for each bedroom in excess of seven, twenty-five cents (\$.25) each up to ten dollars (\$10.00).

(Ord. 8-88. Passed 5-24-88.)

717.34 RESTAURANTS.

Upon every restaurant doing business within the City there is imposed an annual license fee of two dollars (\$2.00) and for each five chairs or five spaces where people are fed in excess of ten, twenty-five cents (\$.25) up to ten dollars (\$10.00).

(Ord. 8-88. Passed 5-24-88.)

717.35 BARBER AND BEAUTICIAN SCHOOLS.

Upon every barber and beautician school there is imposed an annual fee of two hundred fifty dollars (\$250.00).

(Ord. 8-88. Passed 5-24-88.)

717.36 INSURERS.

Upon every corporation or entity acting as an insurer, there is imposed an annual license fee of fifty dollars (\$50.00).
(Ord. 8-88. Passed 5-24-88.)

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717.37 CONSTRUCTION; SEVERABILITY.

The provisions of this article shall be construed so as to make them consistent with State law and consistent with the correlative statutes providing for State licensing fees. If any section or sections of this article shall, even when so construed, be found to be in violation of the laws or constitutions of the State or the United States, or shall be found to be an attempted exercise of power not granted to the City, the resulting invalidity of that section or those sections shall not mean the remaining sections of this article shall not be enforced. It is the intent of Council that each license tax imposed herein should be imposed, even if other license taxes provided for herein could not have been imposed.
(Ord. 8-88. Passed 5-24-88.)

717.38 FALSE STATEMENTS PROHIBITED.

No person shall knowingly make any false statement in any application for a City license provided for in this article, or in any report or other statement relating to any activity licensed by the City and which is required to be made to any City officer or agency.
(Ord. 8-88. Passed 5-24-88.)

717.39 PROSECUTION; INJUNCTIONS.

If any person engages in or prosecutes any business, activity, trade or employment contrary to any of the provisions of this Code, whether without first obtaining a license therefor or by continuing the same after the termination of the effective period of such license, or by any violation of the terms and conditions of such license, he shall be subject to immediate prosecution in the Municipal Court and, in addition, the City Attorney may, in the name of the City, seek such injunctive relief as may be appropriate in any court of competent jurisdiction.
(Ord. 8-88. Passed 5-24-88.)

717.40 EFFECTIVE DATE.

This article shall take effect on July 1, 1988.
(Ord. 8-88. Passed 5-24-88.)

717.41 REGISTRATION OF NONLICENSED BUSINESSES.

Any person undertaking any other business activity not licensed under this article shall be required annually to make application to and to register with, the Director of Finance on such forms as he shall prescribe.
(Ord. 8-88. Passed 5-24-88.)

717.99 PENALTY.

(a) Whoever engages in any activity contrary to the provisions of this article, whether without obtaining a license required therefor before commencing the same or by continuing the same after the termination of the effective period of any such license, may, in addition to paying the license tax, be liable for a penalty of fifty dollars (\$50.00) for each month or fraction thereof during which he has been in default of the license tax. It shall be the duty of the Director of Finance to collect the full amount of the license tax and penalty imposed and he shall not issue any license until the license tax and the penalty have been paid in full.

(b) In addition to the foregoing and except as may herein be otherwise expressly provided, whoever violates any provision under this article shall be fined not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), and each day or part thereof that any violation continues shall be deemed to constitute a distinct and separate offense and be punishable accordingly.

(c) Whoever knowingly makes a false statement in any license tax application shall be fined not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00). Each false statement, whether made with or without other false statements on any one application shall constitute a separate offense.
(Ord. 8-88. Passed 5-24-88.)

ARTICLE 721
License Requirements; Penalty

EDITOR'S NOTE: Former
Article 721 was repealed by Ordinance 8-88, passed May
24, 1988.

1988 Replacement

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ARTICLE 725
Exotic Entertainment Facilities

725.01 License required; fee; regulations.

CROSS REFERENCES
Authority to license - see W. Va. Code 8-13-4, 60-4-23

725.01 LICENSE REQUIRED; FEE; REGULATIONS.

(a) Following the issuance of a state license of a facility where exotic entertainment is offered to a licensee, as that term is defined under the provisions of West Virginia Code 60-4-23, as amended, the licensee shall file an application with the City's Director of Finance for the issuance of a license for the licensure of the facility within the corporate limits of the City. No such licensee shall engage in the performance of exotic entertainment within the corporate limits of the City until such time as the office of the Director of Finance has issued the applicable license to such licensee.

(b) The annual license period for each facility for the performance of exotic entertainment shall be from the 1st day of July to the 30th day of June of the following year. The annual license fee for licenses issued under this article is three thousand dollars (\$3,000) per year per facility within the corporate limits.

(c) All exotic entertainment licenses shall expire on the 30th day of June of each year and may be renewed only upon the submission to the City's Director of Finance of the same information required for the issuance of the state license from the Alcohol Beverage Control Commissioner and such additional information as may be requested by the City's Director of Finance on such forms and by such date as may be prescribed by the Director together with the payment to the Director of the applicable annual license fee required under this section.

(d) No person may conduct an exotic entertainment facility at any location within the corporate limits of the City if the license for such location has been suspended or revoked by the West Virginia Alcohol Beverage Control Commissioner, or has expired.

(e) No person shall sell or transfer a license without notifying the Director of Finance and, for the purpose of this section, the merger of a licensee or sale of more than fifty percent (50%) of the outstanding stock of, or partnership interest in, the licensee shall be deemed to be a sale, assignment of a license under this section. A transferee of a licensed facility may apply for re-issuance of the transferor's license if the transferee is approved by the Alcohol Beverage Control Commissioner as otherwise qualifying for a license.

(f) Interest; Injunction. The fee imposed by this article, if not paid when due, shall bear interest at the rate of six percent (6%) per annum from the due date the licensee commenced business. Each assessment or deficiency notice made by the Director of Finance shall bear interest at the rate of six percent (6%) per annum. In all cases of delinquency or extensions of time, interest shall be assessed and collected. Any person engaging in operating an exotic entertainment facility, after receiving notice that they are doing so without a municipal license, may be enjoined from conducting such business after such notice is given upon application to the Harrison County Circuit Court.
(Ord. 5-00. Passed 5-22-00.)

ARTICLE 729
General License Taxes

EDITOR'S NOTE: Former Article 729 was
repealed by Ordinance 8-88, passed May 24, 1988.

1988 Replacement

ARTICLE 733
Business Franchise Registration Tax

EDITOR'S NOTE: Former Article 733 was
repealed by Ordinance 8-88, passed May 24, 1988.

1988 Replacement

2005 Replacement

ARTICLE 737
Business and Occupation Tax

737.01	Definitions.	737.24	Collection by suit; injunction.
737.02	Privilege tax.	737.25	Tax lien upon person selling out business.
737.03	Exemptions.	737.26	Prerequisite to final settlement with City contractor.
737.04	Production of coal and other natural resource products. (Repealed)	737.27	Final settlement with nonresident contractor.
737.05	Manufactured or compounded products.	737.28	Certificate to Clerk of County Commission of assessment of taxes.
737.06	Selling tangible property; sales exempt.	737.29	Collection by distraint.
737.07	Public service or utility business.	737.30	Administration by Director of Finance.
737.08	Contracting.	737.31	Authorization to inspect returns of City taxpayers.
737.09	Operating amusements.	737.32	Returns and amount of payments confidential.
737.10	Furnishing property for hire.	737.33	New business incentives.
737.105	Aircraft repair, remodeling, maintenance, modification and refurbishing service.	737.34	Business expansion incentives.
737.11	Service business or calling not otherwise specifically taxed.	737.35	Annexed business incentives.
737.12	Banking and other financial business.	737.36	Business Enterprise Zone incentives.
737.13	Credit for industrial expansion; regulations.	737.37	Industrial Enterprise Zone incentives. (Repealed)
737.14	Construction of commercial or industrial facilities.	737.38	Facade improvement incentives.
737.15	Activity in two or more municipalities.	737.39	Developer incentives.
737.16	Computation of tax.	737.40	City economic development grant/loans.
737.17	Erroneous computation.	737.41	General definitions.
737.18	Failure to make return; incomplete or erroneous return.	737.42	Incentive qualifications.
737.19	Records.	737.99	Penalty.
737.20	Appeal; correction of assessment.		
737.21	Tax cumulative.		
737.22	Method of payment.		
737.23	Tax a personal obligation and lien; penalty.		

CROSS REFERENCES

Authority to tax - see W. Va. Code 8-13-5
Business and occupation tax - see W. Va. Code Art. 11-13
Collection of taxes - see W. Va. Code 8-13-15 et seq.

737.01 DEFINITIONS.

For the purposes of this article, the following words and phrases shall have the meanings

respectively ascribed to them by this section:

737.01

BUSINESS REGULATION AND TAXATION CODE

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- (a) "Banking business" or "financial organization" means any bank, banking association, trust company, industrial loan company, small loan company or licensee, building and loan association, savings and loan association, finance company, investment company, investment broker or dealer and any other similar business organization at least ninety percent (90%) of the assets of which consists of intangible personal property and at least ninety percent (90%) of the gross receipts of which consists of dividends, interest and other charges derived from the use of money or credit.
- (b) "Business" includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. "Business" shall not include a casual sale by a person who is not engaged in the business of selling the type of property involved in such casual sale. "Business" includes the production of natural resources or manufactured products which are used or consumed by the producer or manufacturer and includes the activities of a banking business or financial organization.
- (c) "Collector" means the Director of Finance or his authorized agent.
- (d) "Contracting" includes the furnishing of work, or both materials and work, in the fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property. (1976 Code Sec. 10-89.)
- (e) "Gross Income" means the gross receipts of the taxpayer, other than a banking or financial business received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales, and the value proceeding or accruing from the sale of tangible property, (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expenses whatsoever. "Gross income" of a banking or financial business is specified in Section 737.12.
(Ord. 2-92. Passed 2-25-92.)
- (f) "Gross proceeds of sale" means the value, whether in money or other property, actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind. The terms "gross income" and "gross proceeds of sales" shall not be construed to include cash discounts allowed and taken on sales; the proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded, either in cash or by credit; the amount allowed as "trade-in value" for any article accepted as part payment for any article sold; excise taxes imposed by the State; or money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for the repayment of a debt of another.
- (g) "Sale," "sales" or "selling" includes any transfer of the ownership of or title to property, whether for money or in exchange for other property.

- (h) "Selling at wholesale" or "wholesale sales" means sales of any tangible personal property for the purpose of resale in the form of tangible personal property; sales of machinery and supplies or materials which are to be directly consumed or used by the purchaser in the conduct of any business or activity which is subject to the tax imposed by this article; and sales of any tangible personal property to the United States of America, its agencies and instrumentalities or to the State, its institutions or political subdivisions.
- (i) "Service business or calling" includes all activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the production or sale of tangible property, but shall not include the services rendered by an employee to his employer.
- (j) "Taxpayer" means any person liable for any tax hereunder.
- (k) "Tax year" or "taxable year" means the year beginning July 1, of each calendar year, and ending June 30 of each succeeding calendar year.
(1976 Code Sec. 10-89)

737.02 PRIVILEGE TAX.

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

(b) If any person liable for any tax under Sections 737.04 or 737.05 shall ship or transport his products or any part thereof out of the City without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the City shall be the basis for the assessment of the tax imposed in those sections. The Director of Finance shall prescribe equitable and uniform rules for ascertaining such value.

(c) In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and the seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the Director of Finance shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and the seller but the circumstances and conditions are otherwise similar.

(d) Gross income included in the measure of the tax under Sections 737.04 and 737.05 shall neither be added nor deducted in computing the tax levied under the other sections of this article.

(e) A person exercising any privilege taxable under Sections 737.04 or 737.05 and engaging in the business of selling his natural resources or manufactured products at retail in the City shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in Section 737.06 for the privilege of engaging in the business of selling such natural resources or manufactured products at retail in the City. But any person exercising any privilege taxable under Sections 737.04 or 737.05 and engaging in the business of selling his natural resources or manufactured products to manufacturers, wholesalers or jobbers, and, in the case of limestone, sand, gravel or other mineral products, to commercial consumers, shall not be required to pay the tax imposed in Section 737.06 for the privilege of selling such natural resource products or manufactured products at wholesale.

(f) Manufacturers exercising any privilege taxable under Section 737.05 shall not be required to pay the tax imposed in Section 737.06 for the privilege of selling their manufactured products for delivery outside of the City, but the gross income derived from the sale of such manufactured products out of the City shall be included in determining the measure of the tax imposed on such manufacturer in Section 737.05.

(g) A person exercising privileges taxable under the other sections of this article, producing timber or other natural resource products, the production of which is taxable under Section 737.04, and using or consuming the same in his business shall be deemed to be engaged in the business of producing natural resource products for sale, profit or commercial use, and shall be required to make returns on account of the production of the business showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers, which rules the Director of Finance shall prescribe.

(1976 Code Sec. 10-90)

737.03 EXEMPTIONS.

The provisions of this article shall not apply to:

- (a) Insurance companies which pay the State a tax upon premiums; provided, that this exemption shall not extend to that part of the gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in the City, whether such income be in the form of rentals or royalties.
- (b) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members.
- (c) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit; provided, that this exemption shall not extend to that part of the gross income arising from the sale of alcoholic liquor, food and related services, of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of West Virginia Code Article 60-7..
- (d) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes.
- (e) Production credit association, organized under the provisions of the Federal Farm Credit Act of 1933.

- (f) Any credit union organized under the provisions of Chapter 31 or any other chapter of the Code of West Virginia; provided, further, that the exemptions of this Section shall not apply to corporations or cooperative associations organized under the provisions of West Virginia Code Article 19-4.
- (g) Gross income arising from the sale of radio and television broadcasting time. (1976 Code Sec. 10-91)
- (h) Gross income arising from contracts or sales for the construction or improvement of churches, synagogues or other places of worship. (Ord. 8-91. Passed 5-28-91.)

737.04 PRODUCTION OF COAL AND OTHER NATURAL RESOURCE PRODUCTS.

(EDITOR'S NOTE: Former Section 737.04 was repealed by Ordinance 3-91, passed March 12, 1991.)

737.05 MANUFACTURED OR COMPOUNDED PRODUCTS.

(a) Upon every person engaging or continuing within the City in the business of manufacturing, compounding or preparing for sale, profit or commercial use, either directly or through the activity of others in whole or part, any article or articles, substance or substances, commodity or commodities or electric power not produced by public utilities taxable under provisions of this article, the amount of tax to be equal to the value of the article, substance commodities or electric power manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same except as hereinafter provided; multiplied by the rate of eighteen one hundredths of one percent (.18%). The measure of this tax is the value of the entire product manufactured, compounded or prepared in the City for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(b) It is further provided, however, that in those instances in which the same person partially manufactures products within the City and partially manufactures such products outside the City, the measure of this tax under this section shall be that proportion of the sale price of the manufactured product that the payroll cost of manufacturing within the City bears to the entire payroll cost of manufacturing the product; or, at the option of the tax payer, the measure of his tax under this section shall be the proportion of the sales value of articles that the cost of operations in the City bears to the full cost of manufacture of the articles. (Ord. 1-03. Passed 3-24-03.)

737.06 SELLING TANGIBLE PROPERTY; SALES EXEMPT.

Upon every person engaging or continuing within the City in the business of selling any tangible property whatsoever, real or personal, including the sale of food and the services incident to the sale of food in hotels, restaurants, cafeterias, confectioneries and other public eating houses, except sales by any person engaging or continuing in the business of horticulture, agriculture or grazing or of selling stocks, bonds or other evidences of indebtedness, there is likewise hereby levied, and shall be collected, a tax equivalent to forty one hundred twenty-five ten-thousandths of one percent (.4125%) of the gross income of the business, except that in the business of selling at wholesale, the tax shall be equal to twelve hundred thirty-eight ten-thousandths of one percent (.1238%) of the gross income of the business. (Ord. 1-03. Passed 3-24-03.)

737.07 PUBLIC SERVICE OR UTILITY BUSINESS.

Upon every person engaging or continuing within the City in a public service or utility business, except railroad, railroad car, express, water companies, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor vehicle carriers, there is hereby levied and shall be collected taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows:

Street and interurban and electric railways, seventy-five one-hundredths of one percent (.75%); water companies, three percent (3%), except as to income received by Municipally-owned water plants; electric light and power companies, four percent (4%) on sales and demand charges for domestic purposes and commercial lighting; and three percent (3%) on sales and demand charges for all other purposes, except as to income received by Municipally-owned plants producing or purchasing electricity and distributing it; natural gas companies, three percent (3%) on the gross income, such gross income for this purpose to be determined by deducting from the gross income from all sales of gas to consumers, the amount of the tax paid by the taxpayer under Section 737.04 on the production of the same gas; and on all other public service or utility business, two percent (2%).
(Ord. 1-03. Passed 3-24-03.)

737.08 CONTRACTING.

Upon every person engaging or continuing within the City in the business of contracting, the tax shall be equal to two percent (2%) of the gross income of the business. (Ord. 1-03. Passed 3-24-03.)

737.09 OPERATING AMUSEMENTS.

Upon every person engaging or continuing within the City in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, racetrack, radio broadcasting station or any other place at which amusements are offered to the public, the tax shall be equal to forty one hundred twenty-five ten-thousandths of one percent (.4125%) of the gross income of the business.
(Ord. 1-03. Passed 3-24-03.)

737.10 FURNISHING PROPERTY FOR HIRE.

Upon every person engaging or continuing within the City in the business of furnishing any real or tangible personal property which has a tax situs in the City, or any interest therein, for hire, loan, lease or otherwise, whether the return be in the form of rentals, royalties, fees or otherwise, the tax shall be eight hundred twenty-five one-thousandths of one percent (.825%) of the gross income of any such activity. The term "tangible personal property" as used herein, shall not include money or public security.

(Ord. 1-03. Passed 3-24-03.)

737.105 AIRCRAFT REPAIR, REMODELING, MAINTENANCE, MODIFICATION AND REFURBISHING SERVICE.

Upon every person engaging or continuing within the City in the business of aircraft repair, remodeling, maintenance, modification and refurbishing service to any aircraft or to any engine or component part of any aircraft, the tax shall be ten one hundredths of one percent (.10%) of the gross income of any such business. (Ord. 7-93. Passed 7-13-93.)

737.11 SERVICE BUSINESS OR CALLING NOT OTHERWISE SPECIFICALLY TAXED.

Upon every person engaging or continuing within the City in any service business or calling not otherwise specifically taxed under this article, unless exempted by some provision of this article, there is likewise hereby levied and shall be collected a tax equal to eight hundred twenty-five one-thousandths of one percent (.825%) of the gross income of any such business. (Ord. 1-03. Passed 3-24-03.)

737.12 BANKING AND OTHER FINANCIAL BUSINESS.

Upon every person engaging or continuing within the City in the business of banking or financial business, the tax shall be equal to eight hundred twenty-five one-thousandths of one percent (.825%) of the gross income received from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, however denominated, royalties, charges for bookkeeping or data processing, receipts from check sales, charges or fees and receipts from the sale of tangible personal property; provided, that gross income shall not include:

- (a) Interest received on the obligations of the United States, its agencies and instrumentalities;
- (b) Interest received on the obligations of this or any other State, territory or possession of the United States or any political subdivision of any of the foregoing or of the District of Columbia; or
- (c) Interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by nontransients. Provided, that all interest derived on activities exempt under subsection (c) hereof, shall be reported, as to amounts, on the return of a person taxable under the provisions of this section.

Persons taxed pursuant to the provisions of this section shall not be taxed under Sections 737.04 to 737.11.

(Ord. 1-03. Passed 3-24-03.)

737.13 CREDIT FOR INDUSTRIAL EXPANSION; REGULATIONS.

(a) There shall be allowed as a credit against any tax imposed by this article the amount determined under West Virginia Code Article 11-13C relating to tax credit for industrial expansion.

(b) The Director of Finance shall prescribe such regulations, not inconsistent with any corresponding regulations prescribed by the State Tax Commissioner, as may be necessary to carry out the purposes of this section. (1976 Code Sec. 10-101)

737.14 CONSTRUCTION OF COMMERCIAL OR INDUSTRIAL FACILITIES.

(EDITOR'S NOTE: Former Section 737.14 was repealed by Ordinance 11-89, passed October 24, 1989.)

737.15 ACTIVITY IN TWO OR MORE MUNICIPALITIES.

Whenever the business activity or occupation of the taxpayer is engaged in or carried on in two or more municipalities of this State, the amount of gross income or gross proceeds of sale taxable by each municipality shall be determined in accordance with such legislative regulations as the Tax Commissioner may prescribe. Any activity engaged in or carried on which is the subject of taxation pursuant to this Article, may be included in the gross income or proceeds of sale taxable to the taxpayer if such activity was directed from the City of Bridgeport or if the taxpayer maintained a principal office in the City of Bridgeport and if such activity is not taxed or taxable by any other municipality in the State. Nothing herein contained shall be construed as permitting the City of Bridgeport to tax gross income or gross proceeds in violation of the Constitution of this State or of the United States or as permitting the City of Bridgeport to tax any activity that has a definite situs outside of its corporate limits. (Ord. 15-90. Passed 11-13-90.)

737.16 COMPUTATION OF TAX.

The taxes due hereunder shall be due and payable as follows:

- (a) For taxpayers whose tax under this article exceeds one thousand dollars (\$1,000) per month, the tax should be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued. The taxpayer shall, on or before the last day of each month, make out a return upon a form prescribed by the Director of Finance showing the gross proceeds of sales or gross income of business, trade or calling and compute the amount of tax for which he is liable for the preceding month, sign the return and mail it, together with a remittance in the form required by Section 737.22, for the amount of the tax to the office of the Director of Finance.
- (b) For taxpayers whose tax under this article does not exceed one thousand dollars (\$1,000) per month, the tax shall be due and payable in quarterly installments within thirty days from the end of the quarter in which it accrued. The taxpayer shall, within thirty days from the expiration of each quarter, make out a return upon a form prescribed by the Director of Finance showing the gross proceeds of sales or gross income of business, trade, or calling and compute the amount of tax for which he is liable for such quarter, sign the return and mail it, together with a remittance in the form required by Section 737.22, for the amount of the tax to the office of the Director of Finance.

- (c) The Director of Finance, if he deems it necessary to insure payment of the tax, may require a return and payment under this section on other than quarterly periods.
- (d) If for any reason it is not practicable for the individual taxpayer to make the oath, the oath may be made by any duly authorized agent.
(8-8-78)

737.17 ERRONEOUS COMPUTATION.

If the taxpayer makes any error in computing the tax assessable against him, the Director of Finance shall correct such error or reassess the proper amount of taxes, and notify the taxpayer of his action by mailing to him promptly a copy of the corrected assessment, and any additional tax for which such taxpayer may be liable shall be paid within fifteen days after the receipt of such statement. If the amount already paid exceeds that which should have been paid on the basis of the tax so computed, the excess so paid shall be immediately refunded to the taxpayer upon the requisition of the Director of Finance and shall be payable out of any funds available for the purpose. The taxpayer may, at his election, apply an overpayment credit to taxes subsequently accruing hereunder.
(1976 Code Sec. 10-104)

737.18 FAILURE TO MAKE RETURN; INCOMPLETE OR ERRONEOUS RETURN.

If any person fails or refuses to make a return, either in whole or in part, or if the Director of Finance has reasonable grounds to believe that any return made is incorrect or is so deficient as not to form the basis of a satisfactory assessment of the tax, he may proceed as he deems best to obtain information on which to base the assessment of the tax. The Director of Finance may, by himself or his duly appointed agent, make examination of the books, records and papers, and audit the accounts of any such person, including bank accounts, and may take the evidence, on oath, of any person who he may believe shall be in possession of any relevant information. As soon as possible after procuring such information as he may be able to obtain as to any person making an incomplete or incorrect return, or failing or refusing to make a return, the Director of Finance shall proceed to assess the tax and shall notify the person assessed of the amount of the tax. The assessment of the tax by the Director of Finance shall be final as to any person who refused to make a return.
(1976 Code Sec. 10-105)

737.19 RECORDS.

A separate and complete record of the business of any taxpayer conducted within the City shall be kept at his place of business, and shall not be combined or confused with records of business carried on at other places. The Director of Finance may require the preservation of records for a period not exceeding five years. (1976 Code Sec. 10-106)

737.20 APPEAL; CORRECTION OF ASSESSMENT.

If any person, having made a return and paid the tax as provided by this article, feels aggrieved by the assessment so made upon him by the Director of Finance he may apply to Council, by petition in writing, within thirty days after receipt of notice mailed to him by the Director of Finance pursuant to Section 737.18, for a hearing and a correction of the amount of the tax so assessed upon him by the Director of Finance, in which petition shall be set forth the reasons why such hearing should be granted and the amount that such tax should be reduced. Council shall promptly consider such petition, and may grant such hearing, or deny it. If denied, the petitioner shall be forthwith notified thereof; if granted, Council shall notify

the petitioner of the time and place fixed for such hearing. After such hearing Council may make such order in the matter as may appear to it just and lawful and shall furnish a copy of such order to the petitioner. Any such person improperly charged with any tax and required to pay it may recover the amount paid, together with interest, in any proper action or suit against the City. It shall not be necessary for the taxpayer to protest against the payment of the tax or to make any demand to have the same refunded to maintain such suit. Upon presentation of a certified copy of a judgment so obtained by the petitioner, the Director of Finance shall issue his warrant upon any funds available for the purpose. (1976 Code Sec. 10-107)

737.21 TAX CUMULATIVE.

The tax imposed by this article shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, trade or calling. A person exercising a privilege taxable under this article, subject to the payment of all licenses and charges which are conditions precedent to exercising the privilege taxes, may exercise the privilege for the current tax year upon the condition that he shall pay the tax accruing under this article. (1976 Code Sec. 10-108)

737.22 METHOD OF PAYMENT.

All remittances of taxes imposed by this article shall be made to the Director of Finance by bank draft, certified check, cashier's check, money order or certificate of deposit; and the Director of Finance shall issue his receipts heretofore to the taxpayers and the money shall be kept and accounted for as provided by law. (1976 Code Sec. 10-109)

737.23 TAX A PERSONAL OBLIGATION AND LIEN; PENALTY.

A tax due and unpaid under this article shall be a debt due the City. It shall be a personal obligation of the taxpayer and shall be a lien upon all property used in the business or occupation upon which such tax is imposed; provided, that no such tax lien shall be enforceable against a purchaser, including lien creditor, for valuable consideration without notice, unless docketed in the office of the Clerk of the County Court before a deed therefor to such purchaser or the lien of such creditor is delivered for record to the Clerk of the County Court. A penalty of five percent (5%) of the tax shall be added for any default for thirty days or less, and for each succeeding thirty days elapsing before payment there shall be an additional penalty of one percent (1%), all of which penalties shall be secured by the lien therein provided. (1976 Code Sec. 10-110)

737.24 COLLECTION BY SUIT; INJUNCTION.

The Director of Finance may by himself, or a duly appointed agent, collect taxes due and unpaid under this article, together with all accrued penalties, and for such purpose may exercise all the power authorized for the collection of taxes under this chapter and other ordinances of the City and under the laws of the State. After delinquency shall have continued for sixty days, the Director of Finance may proceed, by himself or agent, in the Circuit Court of the County to obtain an injunction restraining the further exercise of the privilege until full payment shall have been made of all taxes and penalties due under this article. (1976 Code Sec. 10-111)

737.25 TAX LIEN UPON PERSON SELLING OUT BUSINESS.

The tax imposed by this article shall be a lien upon the property of any person subject to the provisions hereof who shall sell out his business or stock of goods or shall quit business, and such person shall be required to make the return provided for under Section 737.16 within thirty days after the date he sold out his business or stock of goods or quit business, and his successor in business shall be required to withhold sufficient purchase money to cover the amount of such taxes due and unpaid until such time as the former owner shall produce a receipt from the Director of Finance showing that the taxes have been paid. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes shall be due and unpaid after the thirty-day period allowed, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner. (1976 Code Sec. 10-112)

737.26 PREREQUISITE TO FINAL SETTLEMENT WITH CITY CONTRACTOR.

All officers and agents making contracts on behalf of the City shall withhold payment in the final settlement of such contracts until the receipt of a certificate from the Director of Finance to the effect that all taxes levied or accrued under this article against the contractor with respect to such contracts have been paid. (1976 Code Sec. 10-113)

737.27 FINAL SETTLEMENT WITH NONRESIDENT CONTRACTOR.

(a) Any person, firm or corporation contracting with a nonresident person, firm or corporation engaged in a business or service taxed under this article shall withhold payment in sufficient amount to cover taxes assessed by this article in the final settlement of such contracts until the receipt of a certificate from the Director of Finance to the effect that all taxes levied and accrued under this article against the contractor have been paid.

(b) If any person, firm or corporation shall fail to withhold as provided herein, he shall be personally liable for the payment of all such taxes, and the same shall be recoverable, in the event the contractor fails to pay the tax due and owing, by the Director of Finance by appropriate legal proceedings. (8-8-78)

737.28 CERTIFICATE TO CLERK OF COUNTY COMMISSION OF ASSESSMENT OF TAXES.

The Director of Finance, for the more effective collection of the tax, may file with the Clerk of the County Court a certified copy of an assessment of taxes under this article for recordation which shall thereafter constitute binding notice of the lien created by this article upon all lands of the taxpayer located in the City as against all parties whose interest arose after such recordation. Upon payment of taxes delinquent under this article, the lien of which shall have been recorded, the Director of Finance may certify in duplicate the fact and amount of payment and the balance due, if any, and shall forward the certificates, one to the taxpayer and one to the Clerk of the County Court with the request that he record it in the book in which releases are recorded. From the date that such certificate is admitted to record the land of the taxpayer in the City shall be free from any lien for taxes under this article accrued to the date that the certificate was issued. (1976 Code Sec. 10-114)

737.29 COLLECTION BY DISTRAINT.

The Director of Finance may distraint upon any goods, chattels or intangibles represented by negotiable evidences of indebtedness, of any taxpayer delinquent under this article for the amount of all taxes and penalties accrued and unpaid hereunder.
(1976 Code Sec. 10-115)

737.30 ADMINISTRATION BY DIRECTOR OF FINANCE.

The administration of this article is vested in and shall be exercised by the Director of Finance, who shall prescribe forms and reasonable rules or procedure in conformity with this article for the making of returns and for the ascertainment, assessment and collection of the taxes imposed hereunder; and the enforcement of any of the provisions of this article in any courts of the State shall be under the exclusive jurisdiction of the Director of Finance, who shall require the assistance of and act through the City Attorney.
(1976 Code Sec. 10-117)

737.31 AUTHORIZATION TO INSPECT RETURNS OF CITY TAXPAYERS.

The Manager, in the exercise of sound discretion and at the instance of the Director of Finance, may make written request to the State Tax Commissioner to allow the duly authorized agent of the City to inspect and make copies of State gross sales tax returns filed in the Commissioner's office by taxpayers of the City, for the purpose of securing information for Municipal tax purposes; provided, that before such agent may inspect and make copies of any returns he shall pay in advance, or furnish sufficient security for, such reasonable cost and expense as may be necessary to obtain such information.
(1976 Code Sec. 10-118)

737.32 RETURNS AND AMOUNT OF PAYMENTS CONFIDENTIAL.

All information contained in the returns provided for in this article and the amounts paid under the provisions hereof shall be confidential. No officer or employee of the City shall release to any person any tax information obtained by virtue of a reciprocal exchange of tax information between the State of West Virginia and the City of Bridgeport, unless the person receiving is the authorized counsel of the State or City and shall be using the information only for the purpose of administering business and occupation taxes, sales tax or liquor sales tax, or the person who filed the return has authorized, in writing, its release, thereby waiving his right to secrecy. Unauthorized disclosure of tax information shall be punishable by a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one year, or both, together with all costs of prosecution.
(Ord. 7-92. Passed 10-27-92.)

737.33 NEW BUSINESS INCENTIVES.

(a) Definition. Any new commercial, wholesale, retail, industrial, manufacturing, or service entity which shall physically locate its principal place of business within the corporate limits of the City of Bridgeport either by purchase of real property or by virtue of a lease of five (5) years or more duration, which is subject to the City's B&O tax and which meet the requirements herein may be eligible for the tax credit. No commercial entity which has conducted business within the corporate limits of the City, either currently or in the past, and which changes its name or changes its business structure shall be considered as a new business unless prior approval has been given by the City.

(b) Tax Credit. The tax credit under this section consists of a credit of 90% of assessed City B&O tax resulting from the creation of the new business the first year and 40% for years two and three. A year, for purposes of the tax credit, is defined as the (12) twelve-month period beginning the first day of the quarter the business meets the qualifications for the tax credit.

(c) Qualifying Requirements.

- (1) Investment minimum of \$2,000,000 based on equipment, structures, and improvements;
- (2) Creation of twenty-five new full time jobs;
- (3) Determination by the City that the tax credit being offered will increase the likelihood of the business locating within the corporate City limits and
- (4) The real property and improvements of a business must have a useful life of five or more years; or must have a coinciding lease of not less than five years; or must be depreciable/amortizable tangible personal property which has a useful life of not less than five years.

(d) Tax Credit Computation. Tax credits will be considered on the total gross receipts of the business operation once business commences.

(e) Forfeiture. If the number of full time jobs which are created and attributable to the tax credit falls below twenty-five, the tax credit will be forfeited for that quarter. (Ord. 3-03. Passed 4-28-03.)

737.34 BUSINESS EXPANSION INCENTIVES.

(a) Definition. Business expansion shall be recognized as the expansion of existing facilities by a commercial, wholesale, retail, industrial, manufacturing or service entity currently conducting business within the corporate limits of the City and which expansion is for the purpose of increasing the economic productivity of the business.

(b) Tax Credit. The tax credit under this section consists of a credit of 90% of assessed City B&O tax resulting from the expansion of the business for the first year and 40% for years two and three. A year, for purposes of the tax credit, is defined as the (12) twelve-month period beginning the first day of the quarter the business meets the qualifications for the tax credit.

(c) Qualifying Requirements.

- (1) Expansion investment minimum of \$1,000,000 based on equipment, structures and improvements;
- (2) Creation of five new full time jobs;
- (3) Determination by the City that the tax credit being offered will increase the likelihood of the business locating within the corporate City limits; and
- (4) The real property and improvements of the business expansion must have a useful life of five or more years; or must have a coinciding lease of not less than five years; or must be depreciable/amortizable tangible personal property which has a useful life of not less than five years.

(d) Tax Credit Computation. Tax credits will be determined on the total gross revenue resulting from the expansion. To do this, we will determine the current base revenues. Revenues exceeding the base revenue will be used to calculate the tax credits. Base revenue is determined in the following manner. If a business has been in operation over three (3) years, we will take the average of the last twelve (12) quarters and determine the average annual revenue or base revenue. If a business has been in operation less than twelve (12) tax quarters, we will determine an average quarter for the time they have been in operation, and annualize that number. The result will be used as the base revenue.

(e) Forfeiture. If the number of full time jobs which are created and attributable to the tax credit falls below five, the tax credit will be forfeited for that quarter. (Ord. 3-03. Passed 4-28-03.)

737.35 ANNEXED BUSINESS INCENTIVES.

(a) Definition. Business brought within the corporate limits of the City by way of annexation.

(b) Tax Credit. The tax credit under this section consists of a credit of 90% of assessed City B&O tax generated by the annexed business for the first year and 40% for years two and three. A year, for purposes of the tax credit, is defined as the (12) twelve-month period beginning the first day of the quarter the business meets the qualifications for the tax credit.

(c) Qualifying Requirements.

- (1) The annexed business must have a minimum appraised value of \$500,000. This appraised value will include equipment, structures and improvements;
- (2) The annexed business must have a minimum of five full time jobs;
- (3) Determination by the City that the tax credit being offered will increase the likelihood of the business annexing into the corporate City limits; and
- (4) The real property and improvements of an annexed business must have a useful life of five or more years; or must have a coinciding lease of not less than five years, or must be depreciable/amortizable tangible personal property which has a useful life of not less than five years.

(d) Tax Credit Computation. Tax credits will be considered on the total gross revenues of the business operation once annexation is complete.

(e) Forfeiture. If the number of full time jobs which are realized into the city limits resulting from the annexation and attributable to the tax credit falls below five, the tax credit will be forfeited for that quarter. (Ord. 3-03. Passed 4-28-03.)

737.36 BUSINESS ENTERPRISE ZONE INCENTIVES.

(a) Definition. Any entity that locates a new business or expands an existing business in the City's B-1 Zoning District and located on U.S. Route 50 between the intersection of State Route 58 and State Route 131 which has been designated as a "Business Enterprise Zone."

(b) Tax Credit.

- (1) New business. The tax credit under this section consists of a credit of 90% of assessed B&O tax on gross revenues the first year and 40% for years two and three. A year, for purposes of the tax credit, is defined as the (12) twelve-month period beginning the first day of the quarter the business meets the qualifications for the tax credit.
- (2) Expanding existing business. The tax credit under this section consists of a credit of 90% of assessed B&O tax on qualifying gross revenues resulting from the expansion the first year and 40% for years two and three. A year, for purposes of the tax credit, is defined as the (12) twelve-month period beginning the first day of the quarter the business meets the qualifications for the tax credit.

(c) Qualifying Requirements.

- (1) Investment of \$20,000 minimum;
- (2) Determination by the City that the tax credit being offered will increase the likelihood of the business locating or expanding in the City's "Business Enterprise Zone" and
- (3) The real property and improvements of the business location or expansion must have a useful life of five or more years; or must have a coinciding lease of not less than five year; or must be depreciable/amortizable tangible property which has a useful life of not less than five years.

(d) Tax Credit Computation. Tax credits will be considered on total gross revenues of the new business. For expanding business, qualifying revenues will be determined by taking a three year average revenue base for the three years preceding the expansion (or total business revenue if business has been in operation for less than three years) and applying the credit to all revenues which exceed this average.

(Ord. 3-03. Passed 4-28-03.)

737.37 INDUSTRIAL ENTERPRISE ZONE INCENTIVES.

(EDITOR'S NOTE: Former Section 737.37 was repealed by Ordinance 3-03, passed April 28, 2003.)

737.38 FACADE IMPROVEMENT INCENTIVES (for Business Enterprise Zone).

(a) Definition. Any business entity that remodels the exterior facade of a building in the B-1 Zoning District and is located on U.S. Route 50 between the intersection of State Route 58 and State Route 131 may be eligible.

(b) Tax Credit. 100% B&O tax credit on tax amount due for three years up to a maximum total credit equal to the investment or \$1,000.00 whichever is less, over the three year period. A year is defined as the (12) twelve-month period beginning the first day of the quarter the business meets the qualifications for the tax credit.

(c) Qualifying Requirements.

- (1) A business or property owner must make application and receive approval from the City prior to making improvements.
- (2) Successful applicants must invest a minimum of \$5,000.00.
- (3) The Community Development Director or the City Manager shall have responsibility for approving the eligibility of these improvements.
(Ord. 3-03. Passed 4-28-03.)

737.39 DEVELOPER INCENTIVES.

(a) Definition. Any commercial or manufacturing developer who meets the requirements may qualify for the City's Tax Credit Program. The tax credit will be applied to the B&O taxes resulting from the qualified development only. Only B&O tax assessed on retail sales and rentals qualify for this credit.

(b) Tax Credit. The tax credit under this section consists of 90% of assessed B&O tax for the first year and 40% for years two and three. The three-year period begins at the time the first retail sale or lease rental is consummated and runs consecutively thereafter. A year is defined as the (12) twelve-month period beginning the first day of the quarter the business meets the qualifications for the tax credit.

(c) Qualifying Requirements.

- (1) Investment minimum of \$2,000,000 based on equipment, structures, and infrastructure improvements from funds excluding government loans or grants;
- (2) Determination by the City that the tax credit being offered will increase the likelihood of the development being placed within the corporate city limits; and
- (3) The real property and improvements of the development must have a useful life of five or more years.

(d) Tax Credit Computation. Tax credits will be considered on the gross receipts from retail sales or leases only.
(Ord. 3-03. Passed 4-28-03.)

737.40 CITY ECONOMIC DEVELOPMENT GRANT/LOANS.

Definition. To the extent that it may lawfully do so, the City in its sole discretion, may choose to extend a general economic development grant or loan for the benefit of a business or developer. This grant or loan is based on availability of City funds, the economic impact the development has on the community, and the extent to which the development coincides with City development initiatives and efforts. The City Council may award the grant or loan after the request has been reviewed and a subsequent recommendation is made by the City Manager and the City Economic Development Committee. The grant or loan may be in the form of a grant, matching grant, loan, or a combination of public and private dollars. This grant or loan shall not exceed the amount of B&O tax that the City receives on construction of the infrastructure of the new development.

(Ord. 3-03. Passed 4-28-03.)

737.41 GENERAL DEFINITIONS.

As used herein the following terms shall mean:

- (a) "New employee" means a person who is hired and employed in a new business or annexed business who was not previously employed within the corporate limits of the City by such business. A new employee must be employed at least 160 hours per month at a wage not less than the federal minimum wage or must work for at least six months during the taxable year.
- (b) "New job" means a job which did not exist in the business of the taxpayer within the corporate limits of the City prior to a qualified investment being made, provided this job is directly attributable to the qualified investment and is filled by a new employee as defined herein.
- (c) "Infrastructure improvements" include water, sewer, storm sewer, roads, bridges, streetlights and all other utilities.
(Ord. 3-03. Passed 4-28-03.)

737.42 INCENTIVE QUALIFICATIONS.

- (a) Businesses are only eligible for one B&O tax incentive at a time.
- (b) Businesses which apply for and receive tax increment financing are not eligible for B&O tax incentives or for any other type of grant or loan as defined in Section 737.33 through 737.42.
- (c) Businesses which apply for and receive city B&O tax incentives are not eligible for tax increment financing or any other type of City grant or loan program as defined in Section 737.33 through 737.42.
(Ord. 3-03. Passed 4-28-03.)

737.99 PENALTY.

No person shall refuse to make the return provided to be made in Section 737.16 or fail or refuse to make a remittance for the amount of tax due therewith or fail or refuse to comply with any of the provisions of this article or make any false or fraudulent return or false statement in any return, with intent to defraud the City or evade the payment of the tax, or any part thereof, imposed by this article; nor shall the president, vice-president, secretary or treasurer of any corporation make or permit to be made for any corporation or association any false return, or any false statement in any return required in this article, with the intent to evade the payment of any tax hereunder. Any person violating any provision of this section, shall be fined not more than one hundred dollars (\$100.00). In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of false swearing and shall be punished in the manner provided by law. Any corporation for which a false return or a return containing a false statement is made shall be punished as provided in Section 717.99.
(Ord. 10-89. Passed 10-24-89.)

ARTICLE 739
Public Utility Service Tax

739.01	Definitions.	739.05	Records; inspection.
739.02	Type of tax imposed.	739.06	Exemptions.
739.03	Imposition and amount of tax.	739.07	Rules and regulations.
739.04	Collection; time of payment; accounting.	739.99	Penalty.

CROSS REFERENCES

Public utilities tax - see W. Va. Code 8-13-5a
Business and occupation tax on utilities - see
BUS. & TAX. 737.07

739.01 DEFINITIONS.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (a) "Public utility service" means all services and tangible personal property purchased within the City from a seller, as hereinafter defined, namely, telephone service; electric service; gas service, including bottled or liquid gas, if the seller thereof is classified as a public utility subject to the jurisdiction of the Public Service Commission of the State; water service and sanitary sewer service; waste collection; taxi or limousine service; if purchased, used or consumed within the corporate limits of the City.
- (b) "Purchaser" includes every person who purchases, uses or consumes a public utility service.
- (c) "Seller" includes every person, whether a public service corporation, a Municipality or private corporation, classified as a public utility and subject to the jurisdiction of the Public Service Commission of the State, who sells, furnishes or supplies a public utility service.
- (d) "User" means the owner or tenant of property used for commercial or industrial purposes, and every combination thereof, of every kind or description. (1976 Code Sec. 10-120)

739.02 TYPE OF TAX IMPOSED.

An excise tax upon the privilege of purchasing, using or consuming within the corporate limits of the City any public utility service and tangible personal property supplied by any public utility subject to the jurisdiction of the Public Service Commission of the State, whether such public utility be privately or Municipally-owned or otherwise owned by any type of governmental entity, is hereby imposed and levied as provided in the following sections of this article. (1976 Code Sec. 10-121)

739.03 IMPOSITION AND AMOUNT OF TAX.

There is hereby imposed and levied upon each and every purchaser of a public utility service an excise tax upon the privilege of purchasing, using or consuming, within the corporate limits of the City, such public utility service. Such tax shall be in the amount of two percent (2%) of the charge, exclusive of any Federal or State tax thereon imposed upon the purchaser, made by the seller against the purchaser with respect to each public utility service, which tax in every case shall be collected by the seller and paid by the purchaser upon the amount of each periodic statement rendered such purchaser by the seller, and shall be paid by the purchaser to the seller at the time the purchase price or such charge shall become due and payable under the agreement between the purchaser and the seller. The tax imposed and levied by this article is in addition to all other taxes imposed and levied by the City. In the event the amount of the charge for any single public utility service exceeds the sum of twenty thousand dollars (\$20,000) in any given calendar month, to any single purchaser, no tax shall be imposed for such additional purchase, use or consumption in excess of the amount of twenty thousand dollars (\$20,000). In the event more than one public utility shall furnish the identical public utility service to the same purchaser, such purchaser shall be entitled to group the same as a single public utility service in calculating the amount of the charges in any calendar month for such public utility service. (1976 Code Sec. 10-122)

739.04 COLLECTION; TIME OF PAYMENT; ACCOUNTING.

Every seller, in acting as the tax collecting medium or agency for the City, shall collect from each purchaser for the use of the City the tax hereby imposed and levied at the time of collecting the purchase price charged for its public utility service; and the amount of tax actually collected during each calendar month shall be reported by each seller to the Director of Finance and each seller shall remit the amount of tax shown by such report to have been collected to the Director of Finance on or before the last day of the second calendar month following the month in which collected, together with the name and address of any purchaser who has failed or refused to pay the tax so imposed and levied by this article. The required reports shall be in the form prescribed by the Director of Finance. (1976 Code Sec. 10-123)

739.05 RECORDS; INSPECTION.

Each and every seller shall keep and maintain complete records showing all purchases of public utility service within the corporate limits of the City, which records shall show the charge made against each purchaser, the dates such public utility service was furnished, the date of payment therefor and the amount of tax imposed hereunder, and such records shall be kept open for inspection by the duly authorized agents of the City at reasonable times, and the duly authorized agents of the City shall have the right, power and authority to make, at the expense of the City, such transcripts thereof during such times as they may desire. (1976 Code Sec. 10-124)

739.06 EXEMPTIONS.

The tax hereby imposed and levied shall not apply to the following transactions, which transactions are hereby exempted from such tax:

- (a) Purchases of public utility service for resale.
- (b) Purchases of public utility service by the United States of America, the State of West Virginia and the political subdivisions, municipalities, boards, commissions, authorities and public corporations thereof.
- (c) Purchases of tangible personal property, such as appliances or the like, as distinguished from the public service supplied.
- (d) Charges for telephone services which are paid by the insertion of coins into coin-operated telephones and specific charges or tolls for telephone calls to points outside the corporate limits of the City.
- (e) Nonrecurring or one-time charges incidental to the furnishing of public utility service. (1976 Code Sec. 10-125)

739.07 RULES AND REGULATIONS.

(a) There shall be no liability upon the seller for erroneously collecting the tax hereby imposed and levied or for erroneously failing to bill for such tax as a result of a good faith mistake on the part of the seller. When any purchaser contends that such tax is not owed by such purchaser on the ground that the public utility service was not purchased, used or consumed within the corporate limits of the City, the seller shall refer the question to the Director of Finance, and such seller shall thereafter collect or refrain from collecting such tax from such purchaser for such public utility service as instructed in writing to do so by the Director of Finance. Any and all claims for refunds of any such tax shall be presented to this City and not to the seller.

(b) The Director of Finance shall have authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this article. (1976 Code Sec. 10-126)

739.99 PENALTY.

(a) Any amount of tax due and unpaid under this article shall be a debt due the City. It shall be a personal obligation of the purchaser which shall be enforceable as provided in West Virginia Code 8-13-15, or in any other manner now or hereafter provided by law for compelling the payment of taxes due municipalities.

(b) Any purchaser failing or refusing to pay the tax hereby imposed and levied and any seller or purchaser violating any of the provisions hereof or any lawful rule and regulation promulgated hereunder shall, upon conviction thereof, be punished as provided in Section 721.99. Each failure or refusal to pay the tax for public utility service purchased, used or consumed during different periodic statement periods shall constitute a separate and distinct offense. (1976 Code Sec. 10-127)

ARTICLE 741
Alcoholic Beverages

<p>741.01 City license required. 741.02 Definitions. 741.03 False statement in application for license. 741.04 Nonintoxicating beer; license. 741.05 Nonintoxicating beer; tax imposed. 741.06 License fees. 741.07 License not transferable. 741.08 Display of license.</p>	<p>741.09 Bond required. 741.10 Nonintoxicating beer licensee may sell liquor. 741.11 Tax on intoxicating liquor. 741.12 Private clubs. 741.13 Wine distributors and retailers. 741.14 Retail liquor sales; license; fee.</p>
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CROSS REFERENCES

Preventing illegal sale of alcoholic beverages - see W. Va. Code 8-12-5(20)
Tax on intoxicating liquor; private club fees - see W. Va. Code 8-13-7
Tax on nonintoxicating beer - see W. Va. Code 11-16-17
Liquor control - see GEN. OFF. Art. 521

741.01 CITY LICENSE REQUIRED.

City licenses required under this article may be issued by the Director of Finance upon showing evidence of having obtained a similar State license and compliance with all provisions of State law and of the Codified Ordinances including the City Zoning Code. No person shall fail to obtain a City license for any activity pertaining to the sale, possession for sale, distribution, manufacture or transportation of alcoholic beverages for which a State license is required.

741.02 DEFINITIONS.

Words and phrases defined in West Virginia Code 11-16-2, 60-1-5 and 60-7-2, as amended, shall have the same meanings as therein defined wherever such words and phrases are used in this article.
(7-12-83)

741.03 FALSE STATEMENT IN APPLICATION FOR LICENSE.

No applicant for any license under this article shall knowingly make any false statement of any material fact in his application for such license.
(1976 Code Sec. 3-6)

741.04 NONINTOXICATING BEER; LICENSE

No person shall manufacture, sell, possess for sale, transport or distribute nonintoxicating beer within the City except in accordance with the provisions of this article and after first obtaining a City license therefor, as herein provided.
(1976 Code Sec. 3-7)

741.05 NONINTOXICATING BEER; TAX IMPOSED.

There is hereby levied and imposed an annual license tax upon all dealers in and of nonintoxicating beer, which license period shall begin on July 1 of each year and end on June 30 of the following year, and if granted for a less period, the tax shall be computed quarterly in proportion to the remainder of the fiscal year as follows:

- (a) Retail dealers shall be divided into two classes, Class A and Class B. In the case of a Class A retailer dealer the annual license fee shall be one hundred dollars (\$100.00) for each place of business; the annual license fee for social, fraternal or private clubs not operating for profit, and having been in continuous operation for two years or more immediately preceding the date of application, shall be one hundred dollars (\$100.00).
 - (1) Class A licenses issued for social, fraternal or private clubs shall authorize the licensee to sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other Class A licenses shall authorize the licensee to sell nonintoxicating beer at retail for consumption on or off the licensed premises.
 - (2) In the case of a Class B retailer, the license fee shall be fifteen dollars (\$15.00) for each place of business. A Class B license shall authorize the licensee to sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only for consumption off the licensed premises. Sales under this license to any person at any one time must be in less quantities than five gallons. Such license may be issued only to the proprietor or owner of a grocery store. For the purpose of this article the term "grocery store" means and includes any retail establishment commonly known as a grocery store or delicatessen, where food or food products are sold for consumption off the premises.
- (b) In the case of a distributor the license fee shall be two hundred fifty dollars (\$250.00) for each place of business.
- (c) In the case of a brewer, with its principal place of business located in the City, the license fee shall be five hundred dollars (\$500.00) for each place of manufacture.
(1976 Code Sec. 3-8)

741.06 LICENSE FEES.

Every applicant for a license under Section 741.04 shall, before the license is issued, pay to the Director of Finance the applicable license tax.
(1976 Code Sec. 3-10)

741.07 LICENSE NOT TRANSFERABLE.

No nonintoxicating beer license issued under the provisions of this article shall be transferred to another person, nor shall the location of the premises to which the license relates be changed without the consent of Council, which consent may be refused, in its discretion.
(1976 Code Sec. 3-12)

741.08 DISPLAY OF LICENSE.

Each nonintoxicating beer license issued under the provisions of this article shall be maintained on display in a conspicuous place on the premises to which it relates.
(1976 Code Sec. 3-13)

741.09 BOND REQUIRED.

Upon the arrest of any person for any violation of this article where immediate trial of such person cannot be had, a bond of not less than twenty-five dollars (\$25.00) nor more than the maximum fine provided for under the section or sections allegedly violated, shall be required of such person before he is released from custody, and the bond shall not be accepted unless it be in cash, or in writing signed as surety by one or more persons known by the officers taking the bond to be substantial, reputable and responsible persons. Upon the failure of such person or persons to arrange the bond herein required, such person shall be placed in jail until such bond is procured or until a trial for the violation is had.
(1976 Code Sec. 3-15)

741.10 NONINTOXICATING BEER LICENSEE MAY SELL LIQUOR.

Notwithstanding any other provision of this Code or other ordinance of the City to the contrary, no licensee shall be prohibited from obtaining a license for the sale of nonintoxicating beer under the provisions of West Virginia Code Article 11-16 because such licensee sells alcoholic liquors, permits the consumption of alcoholic liquor on his premises, or is the holder of a Federal tax stamp permitting the sale of such alcoholic liquor.
(1976 Code Sec. 3-25)

741.11 TAX ON INTOXICATING LIQUOR.

There is hereby imposed a tax of five percent (5%) of the retail purchase price of any and all intoxicating liquors purchased from the Alcohol Beverage Control Commissioner or from any person licensed to sell wine at retail to the public under the provisions of West Virginia Code Article 60-8, within the corporate boundaries of the Municipality. Such tax shall be levied upon the purchaser of such intoxicating liquor or wine, and shall be added to any collected with the retail purchase price of such intoxicating liquor or wine. Such tax shall be received by the Municipality from the State Treasury pursuant to the rules and regulations adopted by the Alcohol Beverage Control Commissioner. Provided, however, that such tax shall not be collected on intoxicating liquors, other than wine sold by or purchased from holders of a license issued under the provisions of West Virginia Code Article 60-7. Provided further, such tax shall be collected upon all sales of wine to holders of a license issued under the provisions of West Virginia Code Article 60-7 from a wine distributor licensed pursuant to the provisions of West Virginia Code Article 60-3.
(8-9-83)

741.12 PRIVATE CLUBS.

(a) The annual license fee for a license issued under the provisions of this article to a fraternal or veterans organization or a nonprofit social club shall be three hundred seventy-five dollars (\$375.00).

(b) The annual license fee for a license issued under the provisions of this article to a private club other than a private club of the type specified in subsection (a) hereof shall be five hundred dollars (\$500.00) if such private club has less than 1,000 members, and one thousand two hundred fifty dollars (\$1,250) if such private club has 1,000 or more members.

(c) The fee for any such license issued following January 1 of any year and to expire on June 30 of such year shall be one-half of the annual license fee prescribed by subsections (a) and (b) hereof.
(2-26-80)

741.13 WINE DISTRIBUTORS AND RETAILERS.

(a) No person shall engage in the business of distributing or selling wine as a distributor or retailer as defined in West Virginia Code 60-8-2 without first obtaining a license from the Director of Finance, nor shall a person continue to engage in any such activity after his license has expired, been suspended or revoked. No person may be licensed in more than one of such capacities at the same time.

(b) The Director of Finance shall collect an annual fee for licenses issued under this section as follows:

- (1) Two thousand five hundred dollars (\$2,500) per year for a distributor's license.
- (2) One hundred fifty dollars (\$150.00) per year for a retailer's license.
- (3) Fifty dollars (\$50.00) per year for a wine testing license.

(c) The license period shall begin on July 1 of each year and end on June 30 of the following year, and if the initial license is granted for less than a year, the fee shall be computed in proportion to the number of quarters remaining in the fiscal year, including the quarter in which application was made.

(d) No retailer may be licensed as a private club as provided by West Virginia Code Article 60-7 or as a Class A retail dealer in nonintoxicating beer as provided by West Virginia Code Article 11-16. A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor of a bona fide grocery store or wine specialty shop as defined by West Virginia Code 60-8-2. (6-23-81)

741.14 RETAIL LIQUOR SALES; LICENSE; FEE.

(a) Pursuant to the provisions of West Virginia Code 60-3A-12(e) and West Virginia Code 8-13-4 respectively on and after July 1, 1999, any person, firm or corporation desiring to conduct retail sales of liquor within the corporate limits of the City shall, after first being licensed by the State pursuant to the provisions of West Virginia Code 60-3A-1 et seq., thereafter file as an applicant for retail liquor license with the Director of Finance of the City.

(b) The annual retail license period shall be from the first day of July to the thirtieth day of June of the following year. The annual municipal license fee if an applicant holds a Class A retail license under the state law shall be the sum of one thousand dollars (\$1,000) per outlet. The annual municipal retail license fee if an applicant holds a Class B retail license shall be one thousand dollars (\$1,000) per outlet.

(c) A retail license shall expire on the thirtieth day of June of each year and may be renewed only upon the submission of an application and payment of the required annual fee to the Director of Finance on or before July 1 of each year, on such forms as the Director may prescribe.

(d) No person may sell liquor at any retail outlet within the City if the state retail license applicable to such outlet has been suspended or revoked or has expired.

(e) All retail liquor licenses issued under the provisions of this section shall expire and be of no further force or effect as of the first day of July, the year after they are issued, unless renewed from year to year, as hereinbefore provided.

(f) Violations of the provisions of this section shall be punishable by a fine of up to five hundred dollars (\$500.00).
(Ord. 3-00. Passed 2-28-00.)

ARTICLE 745
Hotel Occupancy Tax

745.01	Imposition; rate.	745.08	Total amount collected to be remitted.
745.02	Definitions.	745.09	Tax return and payment; penalty for failure timely to permit tax.
745.03	Consumer to pay tax; accounting by hotel.	745.10	Keeping and preserving of records.
745.04	Occupancy billed to government agencies or employees.	745.11	Liability of officers.
745.05	Collection of tax when sale on credit.	745.12	General procedure; administration.
745.06	Receivership bankruptcy; priority of tax.	745.13	Application of tax proceeds.
745.07	Failure to collect or remit tax; liability of hotel operator.	745.99	Penalty.

745.01 IMPOSITION; RATE.

Effective July 1, 1985, there shall be imposed and collected a tax upon the occupancy of hotel rooms within the Corporate limits of the City. The rate of tax imposed shall be six percent (6%) of the consideration paid for the use and occupancy of a hotel room. Such consideration shall not include the amount of tax imposed on the transaction under West Virginia Code Article 11-15, or charges for meals, valet service, room service, telephone service or other charges or consideration not paid for use or occupancy of a hotel room. (6-11-85; Ord. 02-05. Passed 6-13-05.)

745.02 DEFINITIONS.

For the purposes of this article:

- (a) "Consideration paid" or "consideration" means the amount received in money, credits, property or other consideration for or in exchange for the right to occupy a hotel room as herein defined.
- (b) "Consumer" means a person who pays the consideration for the use or occupancy of a hotel room. The term "consumer" shall not be construed to mean the government of the United States of America, its agencies or instrumentalities, or the government of the State of West Virginia or political subdivisions thereof.
- (c) "Hotel" means any facility, building or buildings, publicly or privately owned, including a facility located in a State, County or Municipal park, in which the public may, for a consideration, obtain sleeping accommodations. The term shall include, but not be limited to, boarding houses, hotels, motels, inns, courts, lodges, cabins and tourist homes. The term "hotel" shall also include State, County and City parks offering accommodations as herein set forth. The term "hotel" shall not be construed to mean any hospital, sanitarium,

extended care facility, nursing home or university or college housing unit or any facility providing fewer than three hotel rooms, nor any tent, trailer or camper campsites: provided, that where a university or college housing unit provides sleeping accommodations for the general nonstudent public for a consideration, the term "hotel" shall, if otherwise applicable, apply to such accommodations for the purposes of this tax.

- (d) "Hotel operator" means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor or in any other capacity. Where the hotel operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed a hotel operator for the purposes of this article and shall have the same duties and liabilities as his principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.
- (e) "Hotel room" means any room or suite of rooms or other facility affording sleeping accommodations to the general public and situated within a hotel. The term "hotel room" shall not be construed to mean a banquet room, meeting room or any other room not primarily used for, or in conjunction with, sleeping accommodations.
- (f) "Person" means any individual, firm, partnership, joint venture, association, syndicate, social club, fraternal organization, joint stock company, receiver, corporation, guardian, trust, business trust, trustee, committee, estate, executor, administrator or any other group or combination acting as a unit.
- (g) "State park" means any State-owned facility which is part of this State's park and recreation system established pursuant to the West Virginia Code. For purposes of this article, any recreational facility otherwise qualifying as a "hotel" and situated within a State park shall be deemed to be solely within the county in which the building or buildings comprising such facility are physically situated, notwithstanding the fact that the State park within which such facility is located may lie within the jurisdiction of more than one county.
- (h) "Tax," "taxes" or "this tax" means the hotel occupancy tax authorized by this article.
- (i) "Taxing authority" means the City of Bridgeport.
- (j) "Taxpayer" means any person liable for the tax authorized by this article.

(6-11-85)

745.03 CONSUMER TO PAY TAX; ACCOUNTING BY HOTEL.

(a) The consumer shall pay to the hotel operator the amount of tax imposed by this article which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator who shall account for, and remit to the taxing authority, all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this article on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy or use of a hotel room. The hotel operator may commingle taxes collected hereunder with the proceeds of the rental of hotel accommodations unless

the taxing authority shall, by ordinance, order, regulation or otherwise require in writing the hotel operator to segregate such taxes collected from such proceeds. The taxing authority's claim shall be enforceable against, and shall be superior to, all other claims against the moneys so commingled excepting only claims of the State for moneys held by the hotel pursuant to the provisions of West Virginia Code Article 11-15. All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the hotel until the same shall have been remitted to the taxing authority as hereinafter provided.

(b) A hotel or hotel operator shall not represent to the public in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is not to be considered an element in the price to be collected from the consumer.
(6-11-85)

745.04 OCCUPANCY BILLED TO GOVERNMENT AGENCIES OR EMPLOYEES.

(a) Hotel room occupancy billed directly to the Federal Government shall be exempt from this tax; provided, that rooms paid for by a Federal Government employee for which reimbursement is made shall be subject to this tax.

(b) Hotel room occupancy billed directly to this State or its political subdivisions shall be exempt from this tax; provided, that rooms paid for by an employee of this State for which reimbursement is made shall be subject to this tax.
(6-11-85)

745.05 COLLECTION OF TAX WHEN SALE ON CREDIT.

A hotel operator doing business wholly or partially on a credit basis shall require the consumer to pay the full amount of tax due upon a credit sale at the time such sale is made or within thirty days thereafter.
(6-11-85)

745.06 RECEIVERSHIP BANKRUPTCY; PRIORITY OF TAX.

In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes due and unpaid authorized under this article shall be paid from the first money available for distribution in priority to all claims and liens except taxes and debts due to the United States which under Federal law are given priority over the debts and liens created by municipal ordinance or order of the County Commission for this tax and taxes and debts due to the State. Any person charged with the administration or distribution of any such property or estate who violates the provisions of this section shall be personally liable for any taxes accrued and unpaid which are chargeable against the person whose property or estate is in administration or distribution.
(6-11-85)

745.07 FAILURE TO COLLECT OR REMIT TAX; LIABILITY OF HOTEL OPERATOR.

If any hotel operator fails to collect the tax authorized by this article and levied pursuant thereto, or order of the County Commission, or fails to properly remit such tax to the taxing authority, he shall be personally liable for such amount as he failed to collect or remit; provided, that such hotel operator shall not be held liable for failure to collect such tax if the hotel operator can by good and substantial evidence prove the refusal of the purchaser to pay this tax despite the diligent effort in good faith of the hotel operator to collect the tax.
(6-11-85)

745.08 TOTAL AMOUNT COLLECTED TO BE REMITTED.

No profit shall accrue to any person as a result of the collection of the tax authorized under this article. Notwithstanding that the total amount of such taxes collected by a hotel operator may be in excess of the amount for which a consumer would be liable by the application of the levy provided in Section 745.01 for the occupancy of a hotel room or rooms, the total amount of all taxes collected by any hotel operator shall be remitted to the taxing authority as hereinafter provided.

(6-11-85)

745.09 TAX RETURN AND PAYMENT; PENALTY FOR FAILURE TIMELY TO REMIT TAX.

The tax authorized by this article shall be due and payable in monthly installments on or before the fifteenth day of the calendar month next succeeding the month in which the tax accrued; provided, that for credit sales in which the tax authorized by this article is not collected by the hotel operator at the time of such sales, such tax shall not, for purposes of this article, be regarded as having the expiration of the thirty-day period set forth in Section 745.05, whichever shall first occur.

The tax imposed and levied by this article, if not paid when due, shall bear interest at the rate of eight percent (8%) per annum from the due date of the return until paid.

If any operator fails to make the return or any quarterly installment required by this article, or makes his return, but fails to remit in whole or in part the proper amount of tax, there shall be added to the amount of tax unpaid, from the date such tax should have been paid, a penalty in the amount of five percent (5%) of the tax for the first month, or fraction thereof, of delinquency and one percent (1%) of the tax for each succeeding month, or fraction thereof, of delinquency; provided, that if such failure is due to reasonable cause, the Director of Finance may waive in whole or in part these penalties.

Interest and penalties may be collected in the same manner as the tax imposed by this article.

The hotel operator shall, on or before the fifteenth day of each month, prepare and deliver to the taxing authority a return for the preceding month, in the form prescribed by the Director of Finance. Such form shall include all information necessary for the computation, collection and subsequent distribution of the tax as the Director of Finance may require. A remittance for the amount of tax due shall accompany each return. Each return shall be signed by the hotel operator or his/her duly authorized agent.

If any person fails to remit the taxes, interest and penalty provided for under this article, the Director of Finance in his discretion may direct the City Attorney to institute a civil action to collect such tax, interest and penalty or may take whatever legal action in his/her discretion is available.

(Ord. 13-90. Passed 10-9-90.)

745.10 KEEPING AND PRESERVING OF RECORDS.

Each hotel operator shall keep complete and accurate records of taxable sales and of charges, together with a record of the tax collected thereon, and shall keep all invoices and other pertinent documents in such form as the taxing authority may require. Such records and other documents shall be preserved for a period of not less than three years, unless the taxing authority shall consent in writing to their destruction within that period or shall require that they be kept for a longer period.

(6-11-85)

745.11 LIABILITY OF OFFICERS.

If the taxpayer is an association or corporation, the officers thereof actually participating in the management or operation of the association or corporation shall be personally liable, jointly or severally, for any default on the part of the association or corporation; and payment of tax, fines, additions to tax or penalties which may be imposed by this article or other authority, may be enforced against such officers as against the association or corporation which they represent. (6-11-85)

745.12 GENERAL PROCEDURE; ADMINISTRATION.

Council shall promulgate, by ordinance, order, rule or regulation, administrative procedures for the assessment, collection and refund of the tax authorized by this article. (6-11-85)

745.13 APPLICATION OF TAX PROCEEDS.

(a) Application of Proceeds. The net proceeds of the tax collected and remitted to the City pursuant to this article shall be deposited into the General Revenue Fund of the City and after the appropriation thereof shall be expended only as provided in subsections (b) and (c) hereof.

(b) Required Expenditures. At least fifty percent (50%) of the net revenue receivable during the fiscal year by the City pursuant to this article shall be expended in the following manner for the promotion of conventions and tourism:

- (1) If a convention and visitor's bureau is located within the City, the governing body of the Municipality shall appropriate the percentage required by this subsection (b) to that bureau. If a convention and visitor's bureau is not located within the City, but such a bureau is located within Harrison County, then the percentage appropriation required by this subsection shall be appropriated to such convention and visitor's bureau located within the County. If a convention and visitor's bureau is not located within the County, then the percentage appropriation required by this subsection shall be appropriated as follows:
 - A. Any hotel located within the City may apply to the Municipality for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to the Municipality, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of the tax allocable to such hotel shall not exceed seventy-five percent (75%) of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to this subsection (b), provided, that prior to appropriating any moneys to such hotel, the City shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.
 - B. The balance of net revenue required to be expended by this subsection (b) shall be appropriated to the regional travel council serving the area in which the City is located.

(c) Permissible Expenditures. After making the appropriation required by subsection (b) hereof, the remaining portion of the net revenues receivable during the fiscal year by the City, pursuant to this article, may be expended for one or more of the purposes set forth in this subsection, but for no other purpose. The purposes for which expenditures may be made pursuant to this subsection are as follows:

- (1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities including, but not limited to, arenas, auditoriums, civic centers and convention centers;
- (2) The payment of principal or interest or both on revenue bonds issued to finance such convention facilities;
- (3) The promotion of conventions;
- (4) The construction or maintenance of public parks, tourist information centers and recreation facilities (including land acquisition); or
- (5) The promotion of the arts.

(d) Definitions. For purposes of this section, the following terms are defined:

- (1) "Convention and visitor's bureau" and "visitor's and convention bureau" are interchangeable, and either shall mean a nonstock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the Municipality or County in which such convention and visitor's bureau or visitor's and convention bureau is located.
- (2) "Convention center" means a convention facility owned by the State, a county, a municipality or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service and parking facilities, and publicly owned facilities constructed or used for the accommodation and entertainment of tourists and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances thereto.
- (3) "Fiscal year" means the year beginning July 1 and ending June 30 of the next calendar year.
- (4) "Net proceeds" means the gross amount of tax collections less the amount of tax lawfully refunded.
- (5) "Promotion of the arts" means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music for all types, the dramatic arts, dancing, painting and creative arts through shows, exhibits, festivals, concerts, musicals and plays.
- (6) "Recreational facilities" includes any public park, parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts and other park and recreation facilities, whether of a like or different nature, that are owned by a county or municipality. (6-11-85)

745.99 PENALTY.

(a) No person shall willfully refuse to collect or to pay the tax; or shall willfully refuse to make the return required to be made by this article; or shall willfully make any false or fraudulent return or false statement in any return with the intent to defraud any taxing authority; or shall willfully evade the payment of the tax, or any part thereof; nor shall any person willfully aid or abet another in any attempt to evade the payment of the tax, or any part thereof; nor shall any officer, partner or principal of any corporation or association willfully make or willfully permit to be made for such corporation or association any false return, or any false statement in any return authorized by this article, with the intent to evade the payment of this tax.

(b) Whoever willfully violates any provision of this article shall be fined not more than five hundred dollars (\$500.00).

(c) Every prosecution for any offense arising under this article shall be commenced within three years after the offense was committed, notwithstanding any provision of the West Virginia Code to the contrary.

(d) For purposes of this section, the following terms apply:

- (1) "Willfully" means the intentional violation of a known legal duty to perform any act, required to be performed by any provision of this article, in respect of which the violation occurs; provided, that the mere failure to perform any act shall not be the willful violation under this article. A willful violation of this article requires that the defendant have had knowledge of or notice of a duty to perform such act, and that the defendant, with knowledge of or notice of such duty, intentionally failed to perform such act.
 - (2) "Evade" means to willfully and fraudulently commit any act with the intent of depriving the State of payment of any tax which there is a known legal duty to pay.
 - (3) "Fraud" means any false representation or concealment as to any material fact made by any person with the knowledge that it is not true and correct, with the intention that such representation or concealment be relied upon by the State.
- (6-11-85)

