CITY OF OAK HILL

A G E N D A

Special Meeting City Council - November 10, 2021
November 10, 2021 - 5:00 PM

Call to Order

Roll Call

New Business

1. **Consideration to Adopt a Proposed 1% Municipal Sale and Use Tax Ordinance - 1st Reading**

Adjournment

4.20 MUNICIPAL SALES AND USE TAXES

4.20.010 City Council Findings
4.20.020 Definitions
4.20.030 Imposition of Municipal Sales and Service Tax
4.20.040 Imposition of Municipal Use Tax
4.20.050 Calculation of Tax on Fractional Parts of Dollar
4.20.060 State and Local Tax Bases
4.20.070 Exceptions
4.20.080 Credit Against Municipal Use Tax
4.20.090 Tax Cumulative
4.20.100 Local Rate and Boundary Data Base; Changes
4.20.110 State Level Administration
4.20.120 Administrative Procedures
4.20.130 Criminal Penalties
4.20.140 Automatic Updating
4.20.150 Deposit of Taxes Collect in Special Revenue Fund
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4.20.170 Severability and Savings Clause
4.20.180 Effective Date
4.20.190 Notification of Tax Commissioner

4.20.010 City Council Findings

A. The Municipal Home Rule Board on [Insert Date], approved the home rule plan submitted by the City of Oak Hill, West Virginia, thereby allowing the City to adopt a municipal sales and service tax and a municipal use tax pursuant to W. Va. Code 8-l-5a without the limiting restrictions in W. Va. Code 8-13C-1 *et. seq*. In accordance with its home rule plan, the City Council hereby finds and declares that the adoption by this City for its municipal sales and service tax and its municipal use tax provisions of the Code of West Virginia, 1931, as amended, relating to imposition, administration, collection and enforcement of the State consumers sales and service tax codified in W. Va. Code 11-15-1 *et seq*., the State use tax codified in W. Va. Code 11-15A-1 *et seq*., and the Streamlined Sales and Use Tax Act codified in W. Va. Code 11-15B-1 *et seq*. will

1. simplify collection of the City's sales and use taxes
2. simplify preparation of municipal sales and use tax returns by taxpayers, and
3. improve enforcement of the City's sales and use taxes

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

4.20.020 Definitions

A. Terms used in this article or in the administration, collection and enforcement of the taxes imposed by this article and not otherwise defined in this article shall have the meanings ascribed to them in W. Va. Code Chapter 11-9, 10, 15, 15A and 15B, 1931, as amended.

B. As used in this article:

1. "**Business**" includes all activities engaged in or caused to be engaged in by any person with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions, which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.
2. "**City**" or "**this City**" means the City of Oak Hill, West Virginia.
3. "**Code of West Virginia**" or **W. Va. Code**" means the Code of West Virginia, at 1931, as amended from time to time by the West Virginia Legislature.
4. "**Person**" means any individual, partnership, association, corporation, limited liability company, limited liability

partnership or any other legal entity, including this state or its political subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator of any person.

5. "**Purchase**" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.
6. "**Purchase price**" means the measure subject to the taxes imposed by this article and has the same meaning as sales price.
7. "**Purchaser**" means a person who purchases tangible personal property, custom software or a service taxed by this article.
8. "**Sale**," "**sales**" or "**selling**" have the meaning ascribed to those terms in W. Va. Code 11-15.
9. "**Sales and use taxes**" means the taxes imposed by sections 4.20.30 and 4.20.40 of this code.
10. "**Sales price**" has the meaning ascribed to that term in W. Va. Code 11-15B.
11. "**Sales tax**" means the tax levied by section 4.20.30 of this article.
12. "**Service**" or "**selected service**" have the meaning ascribed to those terms in W. Va. Code 11-15B.

13. "**State sales tax**" means the tax levied by W. Va. Code 11-15, as amended.
14. "**State use tax**" means the tax levied by W. Va. Code 11-15A as amended.
15. "**Tax**" means the taxes imposed by this article and includes additions to tax, interest and penalties levied under W. Va. Code 11-10, 1931, as amended.
16. "**Tax Commissioner**" means the Chief Executive Officer of the Tax Division of the Department of Revenue of this State, as provided in W. Va. Code 11-1-1 *et seq*.
17. "**This state**" means the State of West Virginia.
18. "**Ultimate consumer**" or "consumer" means a person who uses or consumes services, tangible personal property or custom software.
19. "**Use**" for purposes of the tax imposed by section 4.20.40 of this article means and includes:

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

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

b. The use or enjoyment in this state of the result of a taxable service. As used in this definition, "enjoyment" includes a purchaser's right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property. The term "use" does not include the keeping, retaining or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the purpose of subsequently transporting it outside the City for use thereafter solely outside this City.

20. "**Use tax**" means the tax imposed by section 4.20.040 of this article.

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

4.20.030 Imposition of Municipal Sales and Service Tax

For the privilege of selling tangible personal property or custom software and for the privilege of furnishing certain selected service, a vendor doing business in this City shall collect from the purchaser the taxes imposed by this section and pay the amount of taxes collected to the tax commissioner at the same time and in the same manner as the consumers sales and service tax imposed by W. Va. Code 11-15, 1931, as amended, are paid to the tax commissioner. The rate of tax shall be one percent of the sales price, as defined in section 4.20.020 of this article of the tangible personal property, custom software or taxable service purchased or leased.

4.20.040 Imposition of Municipal Use Tax

An excise tax is hereby levied and imposed on the use in this city of tangible personal property, custom software and the results of taxable services, to be collected and paid to the tax commissioner as agent for the City in the same manner that state use tax is collected under W. Va. Code 11-15A, 15B, 1931, as amended, and remitted to the tax commissioner. The rate of tax shall be one percent of the purchase price, as defined in section 4.20.020 of this article, of the tangible personal property, custom software or taxable service used within the City.

4.20.050 Calculation of Tax on Fractional Parts of Dollar

The tax computation under section 4.20.030 and section 4.20.040 of this article shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period but the method used shall be the same as that used for purposes of computing the state sales or use tax.

4.20.060 State and Local Tax Bases

The taxable base of the taxes imposed by sections 4.20.030 and 4.20.040 of this article shall be identical to the sales and use tax base of this State except as provided in section 4.20.070 of this article, unless otherwise prohibited by federal law, as required by W. Va. Code 11-15B-34.

4.20.070 Exceptions

The taxes imposed by this article do not apply to:

A. The sale or use of motor fuel, as defined in W. Va. Code 11-14C, 1931, as amended.

B. The sale or use of motor vehicles upon which the tax imposed by W. Va. Code 11-15-3c, 1931, as amended, is paid.

C. The purchase or use of any tangible personal property, custom software or service that the City of Oak Hill is prohibited from

taxing under the laws of this state or of the United States.

D. The sales tax imposed by section 4.20.030 of this article does not apply to any transaction that is exempt from the tax imposed by W. Va. Code 11-15.

E. The use tax imposed by section 4.20.040 of this article does not apply to any purchase upon which the sales tax imposed by section 4.20.030 has been paid.

4.20.080 Credit Against Municipal Use Tax

A. A person is entitled to a credit against the use tax imposed by section 4.20.040 of this article on the use of a particular item of tangible personal property, custom software or results of a taxable service equal to the amount, if any, of sales tax lawfully paid to another municipality for the acquisition of that property, custom software or service: *Provided,* that the amount of credit allowed may not exceed the amount of use tax imposed by section 4.20.040 of this article on the use of the tangible personal property, custom software or results of the taxable service in this City.

B. For purposes of this section:

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

service by the municipality in which the sale occurred; and

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

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

4.20.090 Tax Cumulative

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

4.20.100 Local Rate and Boundary Data Base; Changes

A. The tax commissioner is required by W. Va. Code 11-15B-35 to maintain a database for all jurisdictions levying a sales or use tax in this State. The City Clerk shall furnish the tax commissioner with information the tax commissioner requires for that database that will allow the tax commissioner to maintain a database that assigns each five-digit and nine-digit zip code within the City to the proper rate of tax. If any nine-digit zip code area includes area outside this City, the single state and local rate assigned to that area in the tax commissioner's database will be the lowest rate applicable to that area: *Provided,* that, when sales occur at and are sourced to a physical location of the seller located in the City in that nine-digit zip code area, the seller shall collect the tax imposed by section 4.20.030 of this article.

B. Whenever boundaries of the City change, whether by annexation or de-annexation, the City Clerk shall promptly notify the tax commissioner in writing of the change in boundaries; provide the tax commissioner with the nine-digit zip code or codes for the area annexed or de-annexed; and any other information the tax commissioner may require to maintain the database.

An ordinance annexing property into the City, or an ordinance removing property from the corporate limits of the City may not take effect any sooner than the first day of a calendar quarter

that begins 60 day after the City provides written notice to the tax commission of a change in the municipal boundaries.

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

4.20.110 State Level Administration

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

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

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

4..20.120 Administrative Procedures

Each and every provision of the West Virginia Tax Procedure and Administration Act set forth in W. Va. Code 11-10 applies to the administration, collection and enforcement of the sales and use taxes imposed pursuant to this article, except as otherwise expressly provided in W. Va. Code 8-13C, with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extenso in this article, as provided in W. Va. Code 8-13C-6.

4.20.130 Criminal Penalties

Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in W. Va. Code 11-9 applies to the administration, collection and

enforcement of the municipal sales and use taxes imposed pursuant to this article with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set forth in extenso in this article, as provided in W. Va. Code 8-13C-6: *Provided*, that the criminal penalties imposed upon conviction for a criminal violation of this article may not exceed the maximum penalties allowed by law for a similar violation of the ordinances of this City.

4.20.140 Automatic Updating

Any amendments to W. V. Code 11-9, 10, 15, 15A and 15B shall automatically apply to the municipal sales and use tax imposed pursuant to this article, to the extent they are applicable to the taxes imposed by this article.

4.20.150 Deposit of Taxes Collect in Special Revenue Fund

A. There is hereby established a special revenue fund in the City Treasury which shall be designated and known as the City Sales and Use Tax Fund. The City Sales and Use Tax Fund shall consist of:

1. All revenues received from collection of the City's sales and use taxes, including any interest, additions to tax and penalties deposited with the city treasurer;
2. All appropriations to the fund;
3. All interest earned from investment of the fund; and

4. Any gifts, grants or contributions received and placed by the City into the City Sales and Use Tax Fund.

B. Revenues in the City Sales and Use Tax Fund shall not be treated by any person to be a general revenue of the City. Revenues in the City Sales and Use Tax Fund shall be disbursed in the manner and consistent with the priorities set forth for in subsection C of this section.

C. Revenues in the City Sales and Use Tax Fund shall be used:

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

Fund may periodically be transferred as necessary or convenient to the City's General Revenue Fund or Account.

4.20.160 Issuance of Revenue Bonds

The City shall have the power and authority to issue its revenue bonds or other obligations or refunding revenue bonds or other obligations, as appropriate, under and pursuant to W. Va. Code 8-16-1 *et. seq.* or other appropriate provisions of the W. Va. Code as may be applicable from time to time (the "Bond Act") for the purposes of financing or refinancing costs of infrastructure improvements or economic development activities and projects within the City. The City may pledge or otherwise utilize the collections of the municipal sales and use taxes imposed by this article and the funds on deposit from time to time in the City Sales and Use Tax Fund to satisfy the debt service requirements and any prior debt service requirements deficit each fiscal year on, and to fund or replenish any required reserves in accordance with the bond documents for, any bonds or other obligations issued by the City from time to time, including any refunding bonds, to finance or refinance infrastructure improvements or economic development activities and projects within the City, including the funding or replenishing of any reserve funds relating to any such bonds or other obligations, and/or to make lease payments which repay the debt service or otherwise secure bonds or other obligations issued to finance or refinance infrastructure improvements or economic development

activities and projects within the City. The City may utilize the procedures established pursuant to the Bond Act in connection with the issuance of such bonds or other obligations and in connection therewith it is hereby clarified and directed that the municipal sales and use taxes imposed by this article shall not be considered to be taxation solely for the purposes of and as contemplated by W. Va. Code 8-16-1 *et. seq.*

4.20.170 Severability and Savings Clause

If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable. The City Council declares that it would have adopted this article irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the article be enforced.

4.20.180 Effective Date

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

4.20.190 Notification of Tax Commissioner

Upon adoption of this ordinance by City Council, the city treasurer shall forthwith send to the tax commissioner a certified copy of this ordinance, the rate and the boundary database required by section 4.20.100 of this article, along with a description of the boundaries of the City, and such other information as the Tax Commissioner may need to administer, collect and enforce the taxes imposed by this article.

1st Reading

2nd Reading and adoption