CITY OF MORGANTOWN, KY

RESTAURANT TAX ORDINANCE

BE IT ORDAINED by the City of Morgantown, Kentucky as follows:

WHEREAS, the City Council of the City of Morgantown has determined that the citizenry of Morgantown would benefit from the revenues generated by a restaurant sales tax, the City Council enacts the following:

SECTION 1: DEFINITIONS.

For the purposes of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- COMMISSION: The City of Morgantown Tourism and Convention Commission.
- RESTAURANT: As used in this chapter, restaurant means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants, coffee shops, cafeterias, short order cafes, luncheonettes, grilles, tea rooms, sandwich shops, soda fountains, roadside stands, street vendor, catering kitchens, delicatessen, or similar places in which food is prepared for sale for consumption of the premises or elsewhere.
- RESTAURANT does not include:
    a) School cafeterias which are operated by an elementary school, grade school or secondary school system or Board (but this exemption does not include school cafeterias operated by an independent corporations, companies or food vending services);
    b) Food vending machines; and
    c) Temporary food stand operated by non-profit organizations are exempt from this tax.

SECTION 2: RESTAURANT TAX.

On and after January 1, 2020, there is hereby levied upon the retail sale of all food and beverages by a restaurant located within the municipal limits of the city a tax equal to three percent (3%) of the gross amount of each sale (excluding any other tax). This tax may or may not be passed on to the ultimate customer/consumer at the discretion of the restaurant.

SECTION 3: REPORTING PROCEDURES TO CITY.

A. The funds collected from this tax shall be maintained by the City of Morgantown in a special fund managed by City Hall and disbursed to the Commission monthly. All such money shall be used solely for the purpose of promoting recreational, convention and tourist activity in the city, as set out in KRS 91A.390.
B. The Commission must obtain approval from the City Council prior to using any revenues from the restaurant tax for the purpose of capital improvements including the purchase or acquisition of land. In the event that an approved capital project must be debt serviced by bonds or bonded by the city, the Commission will pledge amounts agreed upon by the Commission and City Council necessary to satisfy principal and interest payments of the bond issue.
C. The Commission is strongly encouraged to obtain approval from the City Council for any projects that are estimated at a cost of $5,000 or more. In obtaining the approval, the Commission must provide

the City Council a complete copy of any and all plans, data, research, appraisals, blueprints, etc. regarding the project.

D. The Commission will continue to provide its annual budget to the City Council.
E. The Commission shall provide a monthly written report to the City Council which includes all income, expenditures, disbursements, and request pertaining to restaurant tax funds.

SECTION 4: REPORTING PROCEDURES FOR RESTAURANTS

On or before the twentieth (20th) day of each calendar month, each restaurant owner and/or operator shall report to City Hall on forms provided by the city the gross amount of sales of the restaurant from food and beverages for the preceding calendar month, and calculation of the tax due for that month by computing three percent (3%) of its gross sales from food and beverages. The owner/operator of the restaurant shall remit with the form the tax due to City Hall.

SECTION 5: TRANSFER OF FUNDS TO TOURISM AND CONVENTION COMMISSION

On or before the last day of each calendar month, City Hall shall transfer to the City of Morgantown Tourism and Convention Commission the gross of monies collected from the restaurant tax collected as of the twenty-fifth (25th) of the current month.

SECTION 6: COLLECTION AND ENFORCEMENT

A. It shall be the duty of the City of Morgantown to collect and receive the restaurant tax imposed by this subchapter.
B. The City of Morgantown shall keep records showing the amount paid by each restaurant owner and/or operator and the date of such receipt.
C. The City of Morgantown is hereby charged with the enforcement of provisions of this subchapter, and is hereby empowered to prescribe, adopt and promulgate, and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of the provisions of the subchapter, including but not limited to provisions of the reexamination and correction of returns to which any underpayment or overpayment is claimed or found to have been made, and the rules and regulations as promulgated by it shall be binding upon the taxpayer. Provided, however, all such rules, regulations and decisions shall be subject to the consent and approval of the Mayor.
D. The Mayor, or any agent or employee designated by him/her, may examine the books, papers, and records of any restaurant in order to determine the accuracy of any return made, or if no return was made, to ascertain the amount of restaurant tax imposed by the terms of this subchapter as he or she may deem is reasonably necessary for the purpose incident to the performance of his or her duties hereunder. The Mayor may enforce this right by application to the appropriate court having jurisdiction over these matters.
E. The Mayor may dispense with examination of the books, papers, and records of any taxpayer in any case where the Mayor is furnished with a certificate of a qualified Certified Public Accountant, or the sworn statement of any other reputable accountant or bookkeeper stating that the amount of restaurant tax reported conforms to the State or Federal Income Tax Return filed for the applicable period.
F. A restaurant owner and/or operator who collects the restaurant tax from one (1) or more persons and who fails to file a return and make payments therewith shall in addition to the penalties prescribed herein upon conviction be subject to a fine of not less than fifty dollars ($50.00) nor more than Five Hundred Dollars ($500.00), or imprisonment for not more than thirty (30) days, or both such fine and imprisonment, for each offense. Such criminal penalties shall be in addition to the penalties imposed within this subchapter.

SECTION 7: INFORMATION DEEMED CONFIDENTIAL; PENALTY FOR DISCLOSURE: EXCEPTIONS

Any information, including returns, documents, or payments made pursuant hereto and any other information gained by the Mayor or any other official, agent, or employee of the city as a result of any return, investigation, hearing or verification required or authorized by the subchapter shall be confidential; except, in accordance with proper judicial order, and any person or agent divulging such information shall, upon conviction, be subject to a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or imprisonment not to exceed thirty (30) days, or both, at the discretion of the court, and upon conviction shall be dismissed from employment by the city. Provided, however, such person may disclose to the Commissioner of the Revenue Cabinet of the state or his or her duly authorized agent, or the other Commissioner of Internal Revenue Service, or his or her duly authorized agent, all such information and extend the right to inspect any of the books and records of the city to said Commissioner of the Revenue Cabinet of the state and/or to said Commissioner of the Internal Revenue Service who must grant to the city the reciprocal right to obtain information from the files and records of the internal Revenue Service and maintains the privileged character of the information so furnished to them.

SECTION 8: CITY CLERK; DUTIES

The City Clerk, or any agent or employee designated by him or her in writing, shall have the following duties in connection with the restaurant tax:

I. Keep accurate records of all returns and of all sums received for restaurant taxes. Such records shall contain the names and addresses of each taxpayer, and the dates and amounts of payments. He or she shall keep the original returns on file for a period of not less than three (3) years after filing.
II. Enforce the provisions of this subchapter, all in accordance with any policies set forth in any ordinance, municipal order, or executive order.
III. Prepare forms and instructions for the returns and payments required by this subchapter. All instructions shall be clear and shall be as short as possible.
IV. Examine returns. And for any returns appearing to be correct, made inquiries, investigations, and adjustments in the amount of tax due.
V. Where necessary to determine accurate figures for determining the amount of tax due, examine books, records, and information stored in computers of any taxpayer, provided that each city officer or employee acting under this subchapter shall identify himself or herself and request the information desired. If the officer or employee is refused admission to any place of business or refused access to any records or computer memory, the City Clerk or employee shall leave the premises and shall seek an appropriate court order, with the assistance of the City Attorney, to obtain access to the information needed.
VI. The City Clerk shall approve the form of all returns and written instructions prior to use by an agent or employee designated by him or her in writing.
VII. The City Clerk may prepare pamphlets for distribution to the public, clearly explaining the restaurant tax, returns, and payments required.

SECTION 9: PROCEDURES FOR APPLYING FOR REFUND OF OVERPAYMENT

A. Any taxpayer (pursuant to this subchapter) who truly believes that he has made or permitted an overpayment of his or her liability for any restaurant tax required by this subchapter may apply for refund of said overpayment provided that he or she files an amended return, verified under oath and setting forth in detail the full explanation of the reason of the said claimed overpayment of his or her liability, within one (1) year of the date of said overpayment is made or the date he or she said restaurant tax payment was due, whichever occurs first.

B. If a refund has been properly claimed according to the provisions of division (A) above, then the City Clerk, with the Mayor's written approval shall have the authority to honor and refund any such overpayment actually made above actual liability upon the restaurant tax required under this subchapter which he or she determines within his or her sole discretion was made through honest mistake or inadvertence.

C. In no event shall any refund be made for any payment upon any restaurant tax unless the refund claim is submitted and filed in strict compliance with the foregoing provisions of this section upon such refund claim forms or amended return forms as hereafter shall be promulgated by the City Clerk from time to time.

SECTION 10: FAILURE TO FILE RETURN, FAILURE TO PAY THE RESTAURANT TAX WITHHELD, UNDERPAYMENT OF AMOUNT DUE

A. If the taxpayer liable for collecting the restaurant tax and filing a return fails to make a return, the City Clerk shall prepare an estimate of the amount of restaurant taxes due based on the best information available to them. He or she may consider the volume of business done in the same type of business, and any other relevant matters. When the City Clerk estimates the restaurant taxes, the amount of interest and late charges provided by this subchapter shall be added to the taxes due. He or she shall notify the taxpayer of the amount due. Such notification shall be in writing and shall contain a brief description of the method and estimated figures used in arriving at the estimated tax. Any taxpayer may dispute the amount of the estimated tax by filing within thirty (30) days of notification of the estimated taxes a return accompanied by payment of the entire balance due together with the interest and late charges due. Such return shall be processed like any late return; and shall establish the restaurant tax liability of the taxpayer in place of the estimated amount prepared by the City Clerk. However, the City Clerk may later determine that the amount shown in the return is insufficient so there is a deficiency, in the same manner as in the case of other returns.

B. If the City Clerk determines, by examining available evidence, that the amount of restaurant taxes paid over by the taxpayer is less than the amount required by this subchapter, he or she shall notify the taxpayer of the deficiency. The City Clerk may use any of the methods authorized in division (A) of the section to determine whether a deficiency exists and to determine the amount of such deficiency. He or she shall thereupon notify the taxpayer of the deficiency. Such notice shall be in writing and shall state not only the amount of the deficiency but also the methods and estimates used in arriving at the amount of the deficiency. If the taxpayer does not object in writing within thirty (30) days of the date of receiving such notice, the taxpayer shall be deemed to have accepted the revised figures for the restaurant tax liability. If the taxpayer does file written objection within the time specified, the taxpayer shall pay the fees, together with penalties and interest, under protest and may thereupon pursue administrative and judicial remedies as provided by this chapter and by state law to seek a refund.

C. If the City Clerk finds that any taxpayer has overpaid, he or she shall notify them of overpayment and shall refund the amount of the overpayment to them.

D. When the City Clerk notifies any taxpayer of any estimated amount due, alleged overpayment, or refund, he or she shall include in the notice clear instructions on how, when, and where the taxpayer may protect or appeal the decision.

E. If any taxpayer or any person, firm, association, or corporation required by this ordinance to pay a restaurant tax or to file a return shall fail to file any return for any month, such failure to file shall constitute a continuing offense against the city and the City Clerk may proceed to estimate and collect the restaurant taxes at any time. In all other cases, no increases shall be made in the taxpayer's restaurant tax liability unless the first notice of such increase is received by the taxpayer within three (3) years of the time the return was first due.

SECTION 11: PENALTY

A. Any person who fails to file any return required within the afore stated time, due to who fails to pay such restaurant tax when same shall become due, shall be charged a penalty of ten percent (10%) of the amount of the unpaid restaurant tax if not paid on or before the due date and another ten percent (10%) for each additional month such return remains un-filed or tax unpaid, not exceeding a penalty of twenty-five percent (25%) in the aggregate.
B. All restaurant taxes imposed which remain unpaid after they become due shall bear interest at the rate of one and one-half of one percent (1.5%) per month (or part thereof.
C. Any person who shall fail, neglect or refuse to make any return or pay any tax due required, or to pay the city those so withheld under the terms, or any person who shall refuse to permit the City Clerk or any agent or employee designated by him/her in writing, to examine books, records, and papers pertaining to information required; or who shall knowingly make any incomplete, false, or fraudulent return, or who shall attempt to do anything whatsoever to avoid the full disclosure of the amount of gross receipts in order to avoid the payment of the whole or any part of the restaurant license tax, shall become liable to the city for such tax as well as the interest and penalty thereon, and shall in addition, be subject to a fine of not less than fifty dollars ($50.00) or more than five hundred dollars ($500.00) or imprisonment for not less than thirty (30) days, each day of non-filing constituting a separate offense. Such criminal penalties shall be in addition to the penalties imposed above.
D. Any person presenting for payment a credit card, check or draft for payment of the taxes set forth in this section and the payment is dishonored, returned for non-sufficient funds (NSF) or charged back to the city account for any reason shall be charged a fee of fifty dollars ($50.00) in addition to any other penalties, fees or interest provided for herein. Any payment to the City, which is dishonored, returned for non-sufficient funds (NSF) or charged back to the city account for any reason shall be treated as if payment had not been received and penalties and interest for non- payment provided for herein shall be charged.