

AN ORDINANCE AMENDING AND REENACTING ARTICLE 705 OF THE CODE OF THE TOWN OF STAR CITY, AS AUTHORIZED BY WEST VIRGINIA CODE SECTION 8-13-4 REGARDING THE TOWN'S AUTHORITY TO REGULATE THE TERMS AND CONDITIONS ASSOCIATED WITH THE ISSUANCE OF MUNICIPAL LICENSES AND TO IMPOSE A REASONABLE TAX ASSOCIATED THEREWITH.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF STAR CITY, THAT ARTICLE 705 IS AMENDED AND REENACTED AS FOLLOWS (additions underlined, deletions strike-through):

ARTICLE 705

Contractor Licensing

705.01 Purpose.

705.02 Definition.

705.03 Necessity for license; exemptions.

705.04 Town license, application; issuance; fees.

705.05 Unlawful use, assignment or transfer of license.

705.06 Prerequisites to obtaining a building permit.

705.07 Payment of Town taxes required; notice prior to issuance of building permit; reporting requirements.

705.08 Article supersedes other provisions.

705.99 Penalty.

705.01 PURPOSE.

The purpose of this article shall be to insure that all persons desiring to perform contracting work in this Municipality are duly licensed by not only the State, but by the Town, so as to ensure capable and skilled craftsmanship is utilized in construction projects in the Town, both public and private, and to ensure fair bidding practices between competing contractors through uniform compliance with the laws of this State and Town, and to protect the public from unfair, unsafe and unscrupulous bidding and construction practices. (Passed 2-8-94)

705.02 DEFINITIONS.

(a) "Contractor" means a person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, ~~where the cost of the undertaking is five thousand dollars (\$5,000) or more.~~ "Contractor" includes subcontractors and all contractors itemized under West Virginia Code § 21-11-5, including electrical general building contractors, general engineering contractors, heating, ventilating and cooling contractors, multi-family contractors, piping contractors, residential contractors and specialty contractors.

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

"Contractor" does not include:

(1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;

(2) A person who personally performs construction work on the site of real property which the person owns or leases, whether it is for commercial or residential purposes;

(3) A person who is licensed or registered as a professional and, who functions under the control of any licensing or regulatory board, and whose primary business is real estate sales, appraisal, development, management or maintenance, who is acting in his or her respective professional capacity, and any employee of such professional, acting in the course of his or her employment who performs any work which may otherwise be considered to be performing contracting work; or

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

(b) "License" means a license to engage in business in this Town as a contractor.

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

(d) "Subcontractor" means a person who performs a portion of a project undertaken by a principal or general contractor, or another subcontractor.

(e) "Handyman Contractor" means a contractor defined in subsection (a) hereof, whose total gross income for work within the Town limits is less than five thousand dollars (\$5,000) per year per job.
(Passed 2-8-94 5-21-24)

705.03 NECESSITY FOR LICENSE; EXEMPTIONS.

(a) On or after the effective date of this article, no person shall engage in this Town in any act as a contractor, as defined in this article, unless such person holds a valid license issued under the provisions of this article. No firm, partnership, corporation, association or other entity shall engage in contracting in this Town unless an officer thereof holds a license issued pursuant to this article.

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

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

(1) Work done exclusively by employees of the United States Government, the State of West Virginia, the County of Monongalia, the Town of Star City, and any other governmental subdivision or agency thereof;

(2) The sale or installation of a finished product, material or article or merchandise which is not actually fabricated into and does not become a permanent fixed part of the structure;

(3) Work performed personally by an owner or lessee of real property on property the primary use of which is for agricultural purposes or for a farming enterprise;

(4) A material supplier who renders advice concerning use of products sold and who does not actually provide construction or installation services;

(5) Work performed by a public utility company regulated by the West Virginia Public Service Commission and its employees, but this exemption does not apply to private contractors employed by the public utility to perform work for the utility;

(6) Repair work contracted for by the owner of the equipment on an emergency basis, in order to maintain or restore the operation of such equipment;

(7) Work performed by an employer's regular employees, for which the employees are paid regular wages and not a contract price, and performed on business property owned or leased by the employer;

(8) Work personally performed on a structure by the owner or occupant thereof; and

(9) Work performed when the specifications for such work have been developed or approved by engineering personnel employed by the owner of a facility by registered professional engineers licensed pursuant to the laws of this State, when the work to be performed, because of its specialized nature or process, cannot be reasonably or timely contracted for within the general area of the facility. (Passed 2-8-94.)

705.04 TOWN LICENSE, APPLICATION; ISSUANCE; FEES.

(a) A person desiring to be licensed as a contractor under this article shall submit evidence that he or she holds a valid West Virginia state contractor's license and complete and submit an application to the Town Recorder Business Office, on such forms as he may be required and prescribed. The application form may include, in at the discretion of the Town Recorder Business Office, but may not be limited to, the following information and such applicant shall state all such information on the application:

(1) Name of applicant applying and the full legal company name as shown on the state contractor's license.

(2) The person's state contractor license number.

(3) Applicant's complete business address and telephone number.

(4) Applicant's federal tax identification number and/or social security number.

(5) The name, address and telephone number of all officers, partners and owners.

(6) Specific locations within the Town where work will be performed, or the name of any specific project that the contractor will be working on.

(7) A sworn statement that state Workers' Compensation coverage is provided to all employees as required.

(8) A sworn statement that a liability insurance policy is in full force and effect, a copy of which may be requested by the Town Recorder Business Office.

(9) A list of personal and bank references, provided at the discretion of the Town Recorder Business Office.

(b) No Town license shall be issued or renewed and no building permit shall be granted unless the contractor's Town business and occupation taxes have been paid for the most recent taxable period when

gross income was received, or for any project the contractor derived income, and unless the contractor has a valid Town and state contractor's license.

(c) Upon the receipt by the Town Recorder Business Office of a completed application and upon approval of the application for a contractor's license, an initial a license fee of ninety dollars (\$90.00) per year shall be paid to the Town, whereupon a license shall be issued. Contractor's licenses shall be renewed annually on or before July 1, and be valid through June 30 of the following year and shall have an annual renewal fee of forty-five dollars (\$45.00) which must be paid to the Town. A renewal license shall be valid for a period of one year, beginning July 1 of each calendar year continuing through June 30 of the following calendar year. Any license which is not renewed prior to its expiration date of June 30 may be reissued within one year after expiration with the filing of a new application by the contractor and payment of the regular annual renewal fee of forty-five dollars (\$45.00), plus a late payment fee of twenty-five dollars (\$25.00). Any license which lapses for a period of one year or more shall be reissued as a new license, and shall be subject to the ninety dollar (\$90.00) annual fee. Fees for initial licenses shall be prorated semiannually. Any contractor defined in Section 705.02 as a "handyman contractor", whose gross income totals less than five thousand dollars (\$5,000) per year job upon filing a signed notarized affidavit and providing to the Town Recorder Business Office written evidence to support this claim, shall only be required to pay an initial a license fee of fifty dollars (\$50.00) and an annual renewal fee of twenty-five dollars (\$25.00). Any contractor who now possesses a valid Town contractor's registration certificate for fiscal year 1993-1994, which was issued under form Article 705 which is being repealed by this Article 705, shall not be required to obtain a license under this article until July 1, 1994, and shall be required to pay only the annual license renewal fee of forty-five dollars (\$45.00) and not the ninety dollars (\$90.00) initial fee. All other new licenses issued under this article shall be required to pay the initial ninety dollar (\$90.00) license fee.

(d) No license issued hereunder shall be transferable. A change in the name under which a person does business shall not require the person to pay the fee for a 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 pay for 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, and provided that the Town Recorder Business Office is notified, in writing, of any change of name or change of partners. (Passed 2-8-94 5-21-24)

705.05 UNLAWFUL USE, ASSIGNMENT OF TRANSFER OF LICENSE.

No license may be used for any purpose by any person other than the person to whom the license is issued. No license may be assigned, transferred or otherwise disposed of so as to permit the unauthorized use thereof. (Passed 2-8-94)

705.06 PREREQUISITES TO OBTAINING A BUILDING PERMIT.

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

(Passed 2-8-94 5-21-24)

705.07 PAYMENT OF TOWN TAXES REQUIRED; NOTICE PRIOR TO ISSUANCE OF BUILDING PERMIT; REPORTING REQUIREMENTS.

(a) Any person, firm or corporation contracting with any person, firm or corporation engaged in a business or service licensed and/or taxed under this article, or taxed under Article 745, shall withhold payment, in sufficient amount, to cover the two percent (2%) Town business and occupation taxes due or any other business and occupation taxes due, under the contract, and withhold an additional amount to cover unpaid license fees, as part of the final settlement of any contract until the receipt of a certificate from the Town Recorder Business Office certifying that Town business and occupation taxes and license fees levied and accrued under the Town's Business and Taxation Code against the general contractor or subcontractor have been paid in full. If the Town, through the Town Recorder Business Office, is unable to collect the taxes and license fees due from any contractor, the person contracting for the work shall be required to forfeit to the Town the unpaid amount of Town taxes and license fees due, from money being withheld from the final payment, upon demand and order of the Town Recorder Business Office.

(b) If any person, firm or corporation contracting with any person fails to withhold a sufficient amount as provided herein, he shall be personally liable for the payment of all unpaid Town taxes. The same shall be recoverable by the Town Recorder by appropriate legal proceedings.

(c) The Town Recorder Business Office may also require every person engaging or continuing within the Town in the business of contracting, who is a nonresident of the State, to pay in advance, or guarantee the payment of the amount of business and occupation tax within the Town. Such payment of such tax is to be based upon the amount of the building permit issued by the Town for the work to be performed by such person or based on the estimated contract amount between any person and the contractor, a copy of which may be requested by the Town Recorder Business Office. In lieu of such advance payment of Town business and occupation tax by delivering to the Town Recorder Business Office a bond, with good and adequate surety, payable to the Town, and conditioned to pay such tax on or before the estimated date of completion of the work to be performed by such person within the Town.

(d) A general contractor shall insure that all subcontractors that may be employed by the general contractor are properly licensed, prior to beginning work as a subcontractor.

(e) The Town Recorder Business Office shall give notice to any contractor, subcontractor or person applying for a permit of the requirement of this section and the personal liability of all parties for payment of Town taxes and license fees.

(f) Each general contractor for any project, with a contract amount or building permit amount in excess of twenty-five thousand dollars (\$25,000) shall be required to furnish the Town Treasurer Code Enforcement Official, in writing, on forms he may prescribe, a list of each and every subcontractor to be employed during the term of the project, and the contract amount of each subcontractor, updated periodically as requested by the Town Recorder Code Enforcement Official and submitted along with other information, as he may require. The general contractor shall also provide evidence of his contract amount and shall also periodically provide any changes to its original contract amount upon request by the Town Recorder Code Enforcement Official, and in all cases, prior to making final payment of taxes to the Town in settlement of any contract.

(g) The general contractor shall be required to show and report separately on the Town business and occupation tax return, any income derived from a project where the amount of the contract exceeds twenty-five thousand dollars (\$25,000). (Passed 2-8-94 5-21-24)

705.08 ARTICLE SUPERSEDES OTHER PROVISIONS.

The provisions of this article shall supersede any conflicting provisions contained in these Codified Ordinances. (Passed 2-8-94)

705.99 PENALTY.

(a) If the Town Recorder or his agent, the Town Treasurer, the Town Building Inspector, Town Code Enforcement Official or any other duly authorized authority determines that a contractor is working within the Town without a Town and state license, or without paying Town business and occupation taxes, he or she may immediately issue a written stop work order and post such order on the premises where the contractor is working.

(b) 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 shall be punished accordingly. (Passed 2-8-94 5-21-24)

First Reading: May 7, 2024

Second Reading/Public Hearing: May 21, 2024

A handwritten signature in blue ink, appearing to read "Steven A. Blinco", written over a horizontal line.

Mayor

A handwritten signature in blue ink, appearing to read "Steven A. Blinco", written over a horizontal line.

Recorder