Ordinance _____

Councilmember Scott Gibb introduced the following Ordinance and moved for its adoption, which motion was seconded by Councilmember Olivia Dean. The Ordinance being in the following words and figures:

"AN ORDINANCE TO IMPLEMENT A MUNICIPAL SALES AND SERVICE TAX AND A MUNICIPAL USE TAX PURSUANT TO W. VA. CODE § 8-1-5a."

WHEREAS, the Town of Marlinton has previously been approved to participate in the Municipal Home Rule Program pursuant to a written plan submitted to and approved by the Municipal Home Rule Board; and

WHEREAS, on July 17, 2024, the Town of Marlinton received approval from the Municipal Home Rule Board to participate in the Municipal Home Rule Program; and

WHEREAS, on July 17, 2024, the Municipal Home Rule Board approved the Town of Marlinton's written Home Rule Plan to adopt a municipal sales and service tax and a municipal use tax pursuant to W. Va. Code §8-1-5a; and

WHEREAS, pursuant to the authority granted by the Municipal Home Rule Board, W. Va. Code §8-11-1, *et seq.*, the council of the Town of Marlinton desires to implement a municipal sales and service tax and a municipal use tax pursuant to W. Va. Code §8-1-5a.

NOW, THEREFORE, THE TOWN OF MARLINTON HEREBY ORDAINS:

That the Town of Marlinton Code shall be amended by the addition of **ARTICLE _____ – MUNICIPAL SALES AND USE TAXES**, as fully set forth in the attached ordinance

This Ordinance shall be effective upon passage.

I, the undersigned Recorder of the Town of Marlinton, State of West Virginia, do hereby certify that the foregoing amendment to an Ordinance was duly passed and adopted by the Town Council of the Town of Marlinton, and that the proposed Ordinance was read by title at not less than three (3) meetings of the Town Council with at least one (1) week intervening between each meeting, and that the Ordinance is now in full force and effect.

12/02/24
Passed First Reading

12/09/24
Passed Second Reading

Mary Clendenen, Recorder

Passed Third Reading

ARTICLE ___ - MUNICIPAL SALES AND USE TAXES.

____.01. Town Council Findings.

____.02. Definitions.

____.03. Imposition of Municipal Sales and Service Tax.

____.04. Imposition of Municipal Use Tax.

____.05. Calculation of Tax on Fractional Parts of Dollar.

____.06. State and Local Tax Bases.

____.07. Exceptions.

____.08. Credit Against Municipal Use Tax.

____.09. Tax cumulative.

____.10. Local Rate and Boundary Data Base; Changes.

____.11. State level administration.

____.12. Administrative procedures.

____.13. Criminal Penalties.

____.14. Automatic Updating.

____.15. Deposit of Taxes Collected in General Revenue Fund.

____.16. ~~Effective Date~~. Severability and Savings Clause.

____.17. ~~Notification of Tax Commissioner~~. Effective Date.

___.18. Notification of Tax Commissioner.

____.01. Town Council Findings.

(a) The Municipal Home Rule Board on July 17, 2024, approved the amended home rule plan submitted by the Town of Marlinton, West Virginia, thereby allowing the Town 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 amended home rule plan, the Town Council hereby finds and declares that the adoption by this Town 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 Town's sales and use taxes, (2) simplify preparation of municipal sales and use tax returns by taxpayers, and (3) improve enforcement of the Town's sales and use taxes.

(b) The Town Council does, therefore, declare that this article be construed so as to accomplish the foregoing purposes.

____.02. Definitions.

(a) Terms used in this article or in the administration, collection and enforcement of the taxes imposed by this article and not otherwise defined in this article shall have the meanings ascribed to them in articles nine, ten, fifteen, fifteen-A, and fifteen-B, chapter eleven of the Code of West Virginia, 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) "Town" or "this Town" means the Town of Marlinton, West Virginia.

(3) "Code of West Virginia" or "W. Va. Code" means the Code of West Virginia, 1931, as amended from time to time by the West Virginia Legislature.

(4) "Municipality" or "this Municipality" means the Municipality of Marlinton, West Virginia.

(5) "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.

(6) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;

(7) "Purchase price" means the measure subject to the taxes imposed by this article and has the same meaning as sales price;

(8) "Purchaser" means a person who purchases tangible personal property, custom software, or a service taxed by this article.

(9) "Sale," "sales," or "selling" have the meaning ascribed to those terms in article fifteen-B, chapter eleven of the Code of West Virginia.

(10) "Sales and use taxes" means the taxes imposed by Sections 03 and 04 of this ordinance.

(11) "Sales price" has the meaning ascribed to that term in article fifteen-B, chapter eleven of the Code of West Virginia.

(12) "Sales tax" means the tax levied by Section 03 of this article.

(13) "Service" or "selected service" have the meaning ascribed to those terms in article fifteen-B, chapter eleven of the Code of West Virginia.

(14) "State sales tax" means the tax levied by article fifteen, chapter eleven of the Code of West Virginia, as amended.

(15) "State use tax" means the tax levied by article fifteen-A, chapter eleven of the Code of West Virginia, as amended.

(16) "Tax" means the taxes imposed by this article and includes additions to tax, interest and penalties levied under article ten, chapter eleven of the Code of West Virginia, 1931, as amended.

(17) "Tax Commissioner" means the Chief Executive Office of the Tax Division of the Department of Revenue of this State, as provided in W. Va. Code §11-1-1.

(18) "This state" means the State of West Virginia.

(19) "Ultimate consumer" or "consumer" means a person who uses or consumes services, tangible personal property, or custom software.

(20) "Use" for purposes of the tax imposed by Section 04 of this article means and includes:

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

including any lease, rental, or conditional sale of tangible personal property or custom software; or

b. The use or enjoyment in this state of the result of a taxable service. As used in this definition, "enjoyment" includes a purchaser's right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property.

The term "use" does not include the keeping, retaining or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the purpose of subsequently transporting it outside the Town for use thereafter solely outside this Town.

(21) "Use tax" means the tax imposed by Section 04 of this article.

(22) "Vendor" means any person engaged in this Town 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.

____.03. 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 services, a vendor doing business in this Town 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 article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, are paid to the tax commissioner. The rate of tax shall be one percent (1%) of the sales price, as defined in Section 02 of this article of the tangible personal property, custom software, or taxable service purchased or leased.

____.04. Imposition of Municipal Use Tax.

An excise tax is hereby levied and imposed on the use in this Town 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 Town in the same manner that state use tax is collected under article fifteen-A and article fifteen-B, chapter eleven of the Code of West Virginia, 1931, as amended, and remitted to the tax commissioner. The rate of tax shall be one percent (1%) of the purchase price, as defined in Section 02 of this article, of the tangible personal property, custom software, or taxable service used within the Town.

____.05. Calculation of Tax on Fractional Parts of Dollar.

The tax computation under Section 03 and Section 04 of this article shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period but the method used shall be the same as that used for purposes of computing the state sales or use tax.

____.06. State and Local Tax Bases.

The taxable base of the taxes imposed by Sections 03 and 04 of this article shall be identical to the sales and use tax base of this State except as provided in Section 07 of this article, unless otherwise prohibited by federal law, as required by W. Va. Code §11-15B-34.

____.07. Exceptions.

The taxes imposed by this article do not apply to:

(1) The sale or use of motor fuel, as defined in article fourteen-C, chapter eleven of the Code of West Virginia, 1931, as amended.

(2) The sale or use of motor vehicles upon which the tax imposed by W. Va. Code §11-15-3c is paid.

(3) The purchase or use of any tangible personal property, custom software, or service that the Town is prohibited from taxing under the laws of this state or of the United States.

(4) The sales tax imposed by Section 03 of this article does not apply to any transaction that is exempt from the tax imposed by article fifteen, chapter eleven of the Code of West Virginia.

(5) The use tax imposed by Section 04 of this article does not apply to any purchase upon which the sales tax imposed by Section 03 has been paid.

____.08. Credit Against Municipal Use Tax.

(a) A person is entitled to a credit against the use tax imposed by Section 04 of this article on the use of a particular item of tangible personal property, custom software, or results of a taxable service equal to the amount, if any, of 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 04 of this article on the use of the tangible personal property, custom software, or results of the taxable service in this Town.

(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.

____.09. Tax cumulative.

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

____.10. 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 Town Treasurer 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 Town to the proper rate of tax. If any nine-digit zip code area includes area outside this Town, 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 Town in that nine-digit zip code area, the seller shall collect the tax imposed by Section 03 of this article.

(b) Whenever boundaries of the Town change, whether by annexation or de-annexation, the Town Treasurer 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 Town, or an ordinance removing property from the corporate limits of the Town may not take effect any sooner than the first day of a calendar quarter that begins sixty ("60") days after the Town provides written notice to the tax commission of a change in the municipal boundaries.

(c) The nine-digit database shall be maintained by the Town 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 Town.

____.11. State level administration.

(a) The tax commissioner is responsible for administering, collecting, and enforcing the taxes imposed by this article as provided in W. Va. Code §8-13C-6 and §11-15B-33. The Town may enter into a written agreement with the tax commissioner that will allow employees of the Town auditing a vendor whose primary business location is in the Town for compliance with the

Town'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 Town and obligate the Town 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 this Town 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 Town shall be remitted at least quarterly by the State Treasurer to the Town Treasurer, as provided W. Va. Code §8-13C-7.

____.12. Administrative procedures.

Each and every provision of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven of the Code of West Virginia applies to the administration, collection, and enforcement of the sales and use taxes imposed pursuant to this article, except as otherwise expressly provided in article thirteen-C, chapter eight of the Code of West Virginia, 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.

____.13. Criminal Penalties.

Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in article nine, chapter eleven of the Code of West Virginia 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 Town.

____.14. Automatic Updating.

Any amendments to articles nine, ten, fifteen, fifteen-A and fifteen-B, chapter eleven of the Code of West Virginia 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.

____.15. Deposit of Taxes Collected in General Revenue Fund.

When the Town Treasurer receives periodic distributions of municipal sales and use taxes from the State Treasurer, the Town Treasurer shall promptly deposit the amount received in the general revenue fund or account of the Town.

____.16. 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 Town 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.

____.17. Effective Date.

(a) This article shall become effective upon its adoption by the Town Council of this Town on _____. However, the Town Council hereby suspends imposition and collection of the municipal sales and use taxes imposed by this article until July 1, 2025, or such later first day of January or July as required by legislative rule codified in W. Va. Code St. R. §110-28-1 *et seq.*

___.18. Notification of Tax Commissioner.

Upon adoption of this ordinance by Town Council, the Town Treasurer shall forthwith send to the tax commissioner a certified copy of this ordinance, the rate and the boundary database required by Section 10 of this ordinance, along with a description of the boundaries of the Town, and such other information as the Tax Commissioner may need to administer, collect and enforce the taxes imposed by this article.