

AN ORDINANCE AMENDING ARTICLE 765 OF THE CITY CODE PROVIDING FOR UTILITY TAXES AND AMENDING ARTICLE 1165 OF THE CITY CODE PROVIDING FOR SOLID WASTE COLLECTION

WHEREAS, the City is authorized by West Virginia Code Chapter 8, Article 12, Section 5 to exercise plenary power and control over the accumulation and disposal of solid waste on private or public property within the City; and

WHEREAS, the Building Code requires that each owner of property provide continuing service at such property for proper solid waste disposal and requires that each owner of property furnish space and facilities on the property for the proper storage and transportation of solid waste for such disposal services; and

WHEREAS, the management of solid waste within the City is an essential public service; and

WHEREAS, the accumulation and disposal of solid waste has the potential to create a serious public health problem if not adequately managed; and

WHEREAS, the efficient collection and disposal of solid waste which is necessary to avoid such a public health problem requires the participation of all community members in the established system for solid waste management; and

WHEREAS, the effective management of solid waste provided for in this Ordinance is intended to provide a sanitary environment that benefits all community members; and

WHEREAS, the City has entered into an agreement for solid waste management services with Allied Waste Services of America, LLC doing business as Republic Services of West Virginia, to act as the designated contractor for collection of solid waste within the City and for management of commercial solid waste accounts and payments within the City; and

WHEREAS, the City has entered into an agreement with the Morgantown Utility Board, a public corporation of the City of Morgantown, to provide for subscription, billing, and payment services for residential solid waste accounts within the City; and

WHEREAS, this Ordinance is intended to coordinate the terms of the referenced agreements with Republic Services and the Morgantown Utility Board with the City Code provisions applicable to the management of solid waste within the City;

NOW, THEREFORE, The City of Morgantown hereby ordains that Articles 765 and 1139 of the City Code are amended as follows:

ARTICLE 765
Utility Tax

765.01. DEFINITIONS.

The following words and phrases when used in this article shall for the purposes of this article have the following meanings:

(a) "Person" includes individuals, firms, partnerships, associations, private or public corporations, governmental agencies or subdivisions, and combinations thereof, of whatever form or character.

(b) "Public utility service" means all services and tangible personal property purchased within this Municipality from a seller, as hereinafter in this section defined, namely, telephone service; electric service; gas service, including bottled or liquid gas; motor carriers and garbage haulers, if the seller thereof is classified as a public utility subject to the jurisdiction of the Public Service Commission of West Virginia; water service and sanitary service; if purchased used or consumed within the corporate limits of this Municipality.

(c) "Purchaser" includes every person who purchases, uses or consumes a public utility service.

(d) "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 West Virginia, who sells, furnishes or supplies a public utility service or is responsible for collection of fees for such public utility service.

765.03. COLLECTING, REPORTING, REMITTING TAX.

It shall be the duty of every seller in acting as the tax collecting medium or agency for this Municipality to collect from each purchaser for the use of this Municipality 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, either by the month or by the quarter of each fiscal year or any part thereof, shall be reported and remitted to the Municipality by each seller within thirty days after the end of the reporting period selected by the seller as being the most convenient in view of its bookkeeping or accounting procedure. The seller shall also furnish to the Municipality with each such monthly or quarterly report the name and address of any such purchaser who has failed or refuses to pay the tax so imposed or levied. The required reports shall be in the form prescribed by the Director of Finance.

ARTICLE 1139
Solid Waste

1139.01. SOLID WASTE MANAGEMENT; PURPOSE; ADMINISTRATION.

- (a) This Article 1139 provides for the management of solid waste within The City of Morgantown.
- (b) City Council finds and concludes that the management of solid waste within the City is an essential public service; that the accumulation and disposal of solid waste has the potential to create a serious public health problem if not adequately managed; that the efficient collection and disposal of solid waste which is necessary to avoid such a public health problem requires the participation of all community members in the established system for solid waste management; that the effective management of solid waste provided for in this Article is intended to provide a sanitary environment that benefits all community members; and that the regulations imposed hereby and fees established herein are necessary and proper to ensure the maintenance of these identified public health benefits and avoid a serious threat to public health.
- (c) The City Manager shall administer the provisions of this Article and shall have the authority to prescribe, publish, promulgate, and enforce any and all reasonable rules and regulations consistent with this Article and the City Code in order to carry out the objects and purposes of this Article for the safety and health of the public with respect to the management of solid waste.

1139.02. DEFINITIONS.

The following terms shall have the meanings given except as otherwise provided by the West Virginia Solid Waste Management Act, West Virginia Code Chapter 22, Article 15, as amended, or any successor thereto.

- 1. Bulky Item - An item of waste either too large or too heavy to be safely and conveniently loaded into the residential solid waste collection vehicles by the personnel available. This includes household items such as large pieces of furniture, bed springs, mattresses, appliances and other discarded materials incidental to the usual routine of major housekeeping.
- 2. Collection - The removal and transportation of solid waste from the point of pick-up to the place of processing, recycling or disposal.
- 3. Commercial Unit - Any structure or location other than a Residential Unit including without limitation a Dwelling Unit containing more than one Residential Unit and any location used for commercial purposes.
- 4. Construction Debris - Waste building materials resulting from construction, remodeling, repair or demolition operations, a small amount of which shall be accepted by the Contractor as a normal generation of refuse from households.
- 5. Contractor - Allied Waste Services of North America, LLC d/b/a Republic Services of West Virginia.
- 6. Curbside - Refers to that area within an arm's reach of the traveled portion of the street.
Dwelling Unit - Any room or group of rooms located within a dwelling and

forming a single habitable unit with facilities which are used, or are intended to be used, for living, sleeping, cooking and eating. Without limiting the generality of the foregoing, each space occupied by an individual or group of individuals for residential purposes pursuant to a lease agreement or other arrangement shall constitute a single habitable unit.

8. Garbage - Putrescible animal or vegetable wastes resulting from the handling, preparation, cooking, serving or consumption of food.
9. Hazardous Waste - A waste or combination of wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics, may: (A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed, as defined in W.Va. Code §22-18-3.
10. Landfill(s) - Any solid waste facility for the disposal of solid waste on or in the land for the purpose of permanent disposal as defined by W. Va. Code §22-15-2(17).
11. Minimum Service - The minimum required amount of solid waste service - whether defined by storage container requirements, number of weekly collections, other means, or some combination thereof - required of any person, entity, or unit.12. Owner - Shall mean any individual or entity with an ownership interest in the Residential or Commercial Unit being serviced by Republic by this Contract.
13. Recyclable Materials - Recyclable materials means bi-metal beverage cans, aluminum beverage cans, glass bottles, steel cans, newspaper, corrugated cardboard and plastics, and other materials as may be defined as recyclable materials under the West Virginia Code, or applicable local, state and federal laws and regulations and under Code 1-7 of the ASTM International Resin Identification Coding System.
14. Refuse - The term shall include garbage, rubbish and yard waste (except sewage, dirt and manure) from all public and private establishments and residences where such garbage and rubbish has been abandoned and left to be picked up by the contractor.
15. Residential Unit - Shall mean a dwelling within the corporate limits of the City comprising not more than one occupied unit.
16. Residential Solid Waste - A mixture of Bulky Items, Construction Debris, Garbage, Recyclable Materials, Rubbish and Yard Waste.
17. Rubbish - Miscellaneous solid waste material resulting from housekeeping, including, but not limited to, packing boxes, cartons, excelsior, plastic peanuts, paper magazines, tin cans, bottles, glassware, dishes, rubber, rags, wood, leather, small automobile parts (except batteries), floor sweepings, and the like. "Rubbish" also includes large pieces of furniture, "white goods", water closets, bathtubs, sinks, cabinetry, paneling and drywall fragments, carpets and pads, fencing and fenceposts, or other material incident to the occupancy and maintenance of a dwelling unit.
18. Solid Waste - Any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant; water supply

treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a of Chapter 22 of the West Virginia Code, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article five-e of Chapter 22 of the West Virginia Code or refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources placed or disposed of at a facility which is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of the West Virginia Code, so long as placement or disposal is in conformance with a permit issued pursuant to such chapters, all as defined by W. Va. Code §22-15-2(31).

19. Special Waste - Means any nonhazardous solid waste which, because of its physical characteristics, chemical make-up, or biological nature requires either special handling, disposal procedures including liquids for solidification at the landfill, documentation, and/or regulatory authorization, or poses an unusual threat to human health, equipment, property, or the environment, including sludge from wastewater treatment plants, medical/infectious waste and automobile tires. Special Waste must conform in all respects with a Contractor-approved Special Waste Profile.
20. Special Waste Profile - Means Contractor's form of documentation that Customer must complete, and Contractor must approve, with respect to any Special Waste prior to Contractor's acceptance of such Special Waste.
21. Unacceptable Waste - Means highly flammable substances, Hazardous Waste, liquid wastes, certain pathological and biological wastes, explosives, toxic materials, radioactive materials, materials that the disposal facility is not authorized to receive and/or dispose of, and other materials deemed by state, federal or local law, or in the reasonable discretion of Contractor, to be dangerous or threatening to health or the environment, or which cannot be legally accepted at the applicable disposal facility.
22. Waste - Means non-hazardous municipal Solid Waste, Yard Waste, and Recyclable Materials, non-hazardous Special Waste. Waste does not include Unacceptable Waste.
23. Working Hours - On a regular collection day, pick-up shall be those hours between 6:00 AM and 5:00 PM or the hours otherwise specified by contract, ordinance, or by the City Manager.
24. Yard Waste - Includes rubbish and those waste materials resulting from the maintenance of properties whereon a dwelling is located, including grass clippings, weeds, leaves, brush, garden waste, shrub or tree prunings and other living or dead plant tissues, except that such materials which, due to inadvertent contamination or mixture with other

substances which render the waste unsuitable for composting, shall not be considered to be yard waste; provided that the same or similar waste generated by commercial agricultural enterprises is excluded. Yard waste does not include large branches, trees or noncombustible materials which are too bulky for collection in "loadpacker" type sanitation equipment used for regular domestic household collections. Tree trimmings shall be accepted only if tied in bundles not exceeding four (4) feet in length and weighing not over sixty-five (65) pounds and shall be placed at the curb for pick-up.

1139.03 PRIVATE COLLECTORS PROHIBITED; SUBSCRIPTION TO MUNICIPAL SERVICE REQUIRED.

- (a) No person, except the City or its designated eContractor, shall engage in or conduct the business of collection, transportation, removal or disposal of solid waste within the City. Private scavengers, pushcart operators and private garbage collectors are hereby prohibited from engaging in the business of transporting or disposing of solid waste, and all persons and commercial entities residing in and doing business within the City shall be required to subscribe to, take and pay for the service provided by the City in accordance with the terms of this Article; provided, however, that this Article shall not be construed to conflict with the laws of this state or of the United States, including without limitation the authority of the United States Congress to regulate commerce among the several states.
- (b) Each owner of the real property containing a Commercial Unit shall be responsible for subscribing to the Minimum Service required by this Article; provided that, where an occupant of such Commercial Unit has an active separately-billed account for service with the Morgantown Utility Board, such occupant shall subscribe and pay for the required Minimum Service upon determination by the City Manager that it qualifies as a Residential Unit based on the separate billing arrangement
- (c) Each Residential Unit shall maintain a subscription to the solid waste service required by this Article at all times during which such Residential Unit is subscribed to water and/or sewer service provided by the Morgantown Utility Board. Each owner of the real property containing a Residential Unit shall be responsible for subscribing to the Minimum Service required by this Article; provided that, where an occupant of such Residential Unit has an active separately-billed account for public water service, such occupant shall be responsible for subscribing to and maintaining the required Minimum Service.
- (d) Each person obligated to subscribe to solid waste service shall subscribe to a level of service designed to meet the minimum anticipated requirements of the unit being served. Subscription to adequate service, including provision of an appropriate container size and appropriate collection cycle, promotes the sanitary storage, transportation, and disposal of solid waste and prevents improper disposal of solid waste as well as spillage and leakage from solid waste containers. This level of service is deemed the Minimum Service requirement and is based upon a reasonable estimate of waste generated by each type of unit served, as defined herein, in accordance with the practice and guidelines of the solid waste

management industry. The Minimum Service for each unit shall be a subscription sufficient do dispose of the anticipated waste generated by each unit as defined in Table 1139.03.01 or as otherwise required pursuant to the rules and regulations authorized by this Article upon the determination of the City Manager. Subscription to the Minimum Service shall not absolve any person from any other requirement of this Article, including without limitation the requirement to properly store solid waste and related containers.

1139.04. COLLECTION OF SOLID WASTE

- (a) Refuse, Yard Waste and Recyclable Materials will be collected and removed from all properties once per week or as otherwise required by the Minimum Service requirements and/or customer subscriptions to service so long as said materials are properly tied and/or bundled, placed in suitable containers and properly located at curb or roadside, or in a designated dumpster or compactor. During times of severe weather, such materials shall be collected at the first opportunity.
- (b) Recyclable materials will be collected on the same day as refuse at Residential Units.
- (c) Household hazardous waste materials, or waste generated by normal household activities that contain toxic chemicals that should be handled properly such as batteries, paint, household chemical products, will be collected only at such temporary designated drop off locations as may be established by the City and which will allow for proper storage and disposal of such materials.
- (d) Electronic waste will be collected no less than monthly at each unit as an on-call service.
- (e) One Bulky Item may be left for collection at each unit on each regular collection date. Additional Bulky Items will only be collected upon arrangement with the City's contractor and payment of any applicable fee.
- (f) Construction Debris are not included in regular collections and shall not be deposited in a storage container intended for regular collection. Construction Debris will only be collected upon arrangement with the City's contractor and payment of any applicable fee.

1139.05. STORAGE OF SOLID WASTE AND RECYCLABLES.

- (a) Solid waste and recyclable materials shall be stored in containers provided by the City's designated contractor or such other method as authorized by the City Manager or a designee in accordance with this Article and any applicable contract or permit governing the disposal of solid waste within the City. A garbage bag shall be acceptable as a solid waste container only when it contains no food waste or recyclable materials, but no material may be stored outdoors in a garbage bag outside of the designated time period for curbside solid waste collection.

(b) No person shall deposit or store solid waste in solid waste containers unless such solid waste has been prepared for collection, removal and disposal, and complies with the definition of solid waste as set out in this article. Lids shall be kept on solid waste containers at all times. Solid waste and recyclable containers ~~are~~ shall not ~~to~~ be stored in front yards or on front porches of residences on a regular basis, where said containers can be viewed by the general public, unless a special waiver for the same has been issued to a residence, in writing, by the City Manager. When required by the Building Code or other applicable provision of City Code, storage containers shall be kept within a secure enclosure.

1139.061. IMPROPER DISPOSAL OF SOLID WASTE; ILLEGAL DUMPING; USE OF UNAUTHORIZED SOLID WASTE CONTAINERS.

(a) No person shall dispose of solid waste outside of a properly designated location.

(b) No person shall dispose of solid waste in an unauthorized containers or outside of an authorized container.

(c) ~~No person to~~ shall place solid waste in a dumpster or other solid waste container owned or leased by another person, unless first authorized to do so in writing by the owner of such container and an authorized representative of the City

(d) No person shall deposit either residential or commercial solid waste in ~~to~~ a publicly owned trash receptacle ~~that is~~ located within a public right-of-way.

(e) Any person found guilty of violating this section shall be fined a minimum of two hundred fifty dollars (\$250.00) but not more than five hundred dollars (\$500.00).

(f) Persons engaged in beautification campaigns or otherwise participating in the collection of, and clean up of, litter, solid waste or other trash with the goal of beautifying the City or its environs and disposing of such litter in properly designated locations and authorized containers in the vicinity of the litter collected, shall be exempt from the fines set forth in paragraph (e) above.

1139.07. DISPOSITION OF SOLID WASTE.

No person shall dispose of solid waste within the City except as provided in this article.

1139.08. LITTERING; PERMITTING PREMISES TO BECOME UNSANITARY OR HAZARDOUS.

(a) No person shall leave or deposit any solid waste, refuse, litter, or other waste, over or upon

any premises, street or alley, either public or private

- (b) No owner, manager, or occupant of any property shall permit the accumulation of solid waste or litter on the premises, to become or remain offensive, unsanitary, unsightly, unsafe to public health or to pose a risk of fire.
- (c) Any person who violates this Section shall be fined a minimum of fifty dollars (\$50.00) but no more than five hundred dollars (\$500.00) for each violation, or, in the alternative, may be sentenced to a period of community service collecting litter for a time period no less than ten hours and no more than twenty hours. Each day that a violation continues shall be deemed a separate violation.

1139.09. STORAGE OF SOLID WASTE.

No person shall store or permit the storage of solid waste on or about any premises the person owns, controls, or occupies unless such solid waste is kept in authorized storage containers as provided by this article.

1139.10. CONTAINERS REQUIRED FOR COLLECTION.

Materials not stored in containers authorized by this Article will not be subject to the regular collection services provided in this Article, and any storage of materials outside authorized containers shall be considered improper disposal of waste in violation of this Article.

1139.11. ACCESSIBILITY OF SOLID WASTE AND RECYCLING CONTAINERS.

- (a) Authorized storage containers other than dumpsters or compactors shall be placed at the street curb or adjacent to the roadway by 6:00 a.m. on each scheduled collection date, except where placement in a different location has been authorized or directed by the City Manager. Authorized storage containers may be placed at the collection site no earlier than 6:00 p.m. on the day before the scheduled collection and shall be removed from the collection site and returned to storage on the user's property by 9:00 p.m. on the day of collection. Provisions for the placement and collection of containers within the Downtown Solid Waste Collection District shall supersede the provisions of this Paragraph within that District.
- (b) Each dumpster or compactor shall be kept in a location accessible for collection by the contractor, and each user thereof shall ensure that the container is accessible on each day scheduled for collection. Each dumpster or compactor shall be kept within a secure enclosure when required by the Building Code or other provision of City Code, and the users of such dumpster or compactor shall be responsible for ensuring the contractor can access the secure enclosure on each date scheduled for collection.
- (c) For purposes of this Article, the term "Downtown Solid Waste Collection District" shall

mean:

Beginning at the northern most point between Morgantown Tax District 1 Map 26 Parcel 54.1 (currently addressed 1993 Water Street) and Map 26 Parcel 41 (currently known as Knapp Hall); thence in a southerly direction along the eastern side of the Monongahela River to the northern side of Decker's Creek; thence in easterly direction along the northern side of Decker's Creek to the southeastern most boundary at Map 29 Parcel 49 thence in a northeasterly direction along the boundaries of Map 29, Parcels 49, 50 (305 Fayette Street), 51, 52 (97 Forest Avenue), and Map 26 Parcel 262 (456 Spruce Street) to Forest Avenue; thence across Forest Avenue to a point on the northern side of Forest Avenue to a point on the southern boundary of Map 26, Parcel 249; thence in a northeasterly direction along the western side of Baird Street (formerly Park Avenue) to the end of the Baird Street right-of-way; thence in a northwesterly direction along Map 26, Parcel 263 to southwest point of Map 26, Parcel 264 (293 Willey Street); thence along the western side of Price Street in a northeasterly direction to the southern edge of Prospect Street; thence in a westerly direction along the southern edge of Prospect Street to the eastern edge of North High Street; thence in a southwesterly direction along the eastern edge of North High Street to the western edge of Willey Street and High Street; thence in a northwesterly direction to the eastern edge of University Avenue; thence in a southwesterly direction along the eastern edge of University Avenue to the northern edge of Fayette Street; thence across University Avenue (Beechurst Avenue) to the western edge of Beechurst Avenue; thence in a northwesterly direction along Beechurst Avenue to the northeastern point on Map 26, Parcel 44 (21 Beechurst Avenue); thence along the northern boundary of Map 26, Parcels 44 and 45.1 to the point of beginning; as shown on the following map titled "Downtown Solid Waste Collection District".

[NOTE: Table not reproduced in this ordinance]

- (d) In the Downtown Solid Waste Collection District, authorized storage containers shall be placed at the collection site no more than two hours prior to the scheduled collection time and removed from the collection site and returned to private storage no more than two hours after the scheduled collection time.

1139.12 RATES.

The rates for service prescribed by this Article shall be as set forth in Table 1139.12.1.

1139.13. PAYMENT FOR SERVICES.

- (a) Each person required to subscribe to the services governed by this Article shall pay the required fees for such service established by this Article. Payment shall be made in accordance with the terms provided in the billing statement issued to the user of the service and shall include the payment of any penalties or interest established by any rule, regulation, or agreement adopted by the City.

(b) Failure to pay for services required by this Article shall constitute a violation of the Article and shall subject the person in violation to citation, fines, denial of service, or other penalties prescribed by law.

1139.14. RECYCLING.

(a) Users of the services provided by this article shall be responsible for complying with all present and future recycling laws of this State, which are hereby adopted by reference, and any resulting rules which may be established by the City Manager and/or the City's designated independent contractor for the implementation thereof.

(b) All users shall be required to place recyclable materials in recycling containers as provided by the City's designated independent contractor. The aforementioned recycling containers are to be placed at curbside for pickup on dates (at least once a month) established by the City's designated independent contractor.

(c) The City recognizes that compliance with the recycling requirements of this section will not only result in better utilization of available landfill space, but also, assist in minimizing user fees, incentives which all users should recognize.

1139.99 PENALTY.

Whoever violates any provision of this article, or fails, neglects or refuses to abide by and comply with the rules and regulations promulgated to effectuate the provisions of this article, shall be fined not more than five hundred dollars (\$500.00), except where a different penalty is specifically provided.

Each succeeding day that a violation of this article exists shall constitute a new and separate offense.

This ordinance shall be effective upon adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

RECORDED:

CITY CLERK