

ORDINANCE 344

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKINS, WEST VIRGINIA, AMENDING §110.055 OF THE ELKINS CITY CODE TO INCORPORATE A DE MINIMUS EXEMPTION FOR CERTAIN SMALL BUSINESSES AND INDEPENDENT CONTRACTORS IN ACCORDANCE WITH HOUSE BILL 2451

WHEREAS, the Common Council of the City of Elkins has previously adopted ordinances regarding business and occupation tax; and

WHEREAS, these ordinances were codified in Chapter 110: Business Licenses, Regulations and Taxes, particularly Business and Occupation Tax, §110.055 Short Title; and

WHEREAS, the West Virginia Legislature in its 2025 Regular Session, passed House Bill 2451 effective July 11, 2025, which terms and provisions require municipalities to amend their city codes to comply with these changes; and

WHEREAS, the Common Council has determined that by making these amendments to said Chapter and Section it is in the best interest of the citizens of the City.

NOW THEREFORE BE IT ORDAINED AND ENACTED by the Common Council of the City of Elkins that the City Code, Chapter 110: Business License and Regulations and Taxes, specifically Business and Occupation Tax, §110.055 Short Title, be revised and amended as follows, with the amendments and additions being underlined and shown below:

§110.57 DEFINITIONS

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

Independent contractor means a natural person who provides labor, services, or materials to another for compensation and:

- (1) Is not treated as an employee for purposes of federal income tax withholding.**
- (2) Is issued an Internal Revenue Service Form 1099 for such services; and**
- (3) Retains control over the manner and means of performing the work, consistent with Internal Revenue Service guidance and common law agency principles.**

Permanent physical location means any fixed place of business within the corporate limits of the City of Elkins at which the person regularly conducts business, including but not limited to a commercial office, retail store, warehouse, workshop, or dedicated space within a residence.

The term does not include temporary job sites, incidental use of public spaces, or occasional in-person meetings, nor does it include a postal mailing address or third-party drop location unless business activity is regularly conducted there.

Sole Proprietor means someone who owns an unincorporated business by themselves.

§110.58 IMPOSITION OF TAX

(D) Notwithstanding the foregoing, no tax shall be imposed pursuant to this section for any tax year in which the taxpayer's gross income is less than two thousand five hundred dollars (\$2,500), as further provided in § 110.069A.

§110.069A DE MINIMUS GROSS INCOME EXEMPTION FOR SMALL BUSINESS

Effective July 1, 2025, a person engaging in business withing the municipality shall not be subject to the municipal business and occupation or privilege tax imposed by this article for any tax year in which the taxpayer's gross income, as defined in § 3.4 of this article, is less than two thousand five hundred dollars (\$2,500.00).

This exemption shall apply on a prospective basis only and shall not affect liability for any tax periods ending prior to July 1, 2025.

For purposes of this section, the term "gross income" shall be interpreted consistently with § 110.057 of this article and includes all receipts and values accruing to the taxpayer from engaging in business, without deduction.

§ 110.072 RETURNS; COMPUTATION AND PAYMENT OF TAXES

(D) A person whose gross income for a tax year is less than two thousand five hundred dollars (\$2,500.00), as described in § 110.69A of this article, shall not be liable for the tax imposed by this article but may be required to file a return or declaration indicating that their gross income is below the applicable threshold, in such form as the Treasurer may prescribe.

All other sections and provisions of City Code §110.055 Short Title, not specifically referred to herein, shall remain in full force and effect.

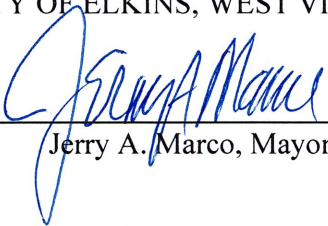
If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and Common Council determines that it would have adopted this Ordinance without the invalid provision.

This Ordinance shall become effective on July 1, 2025.

PASSED AND APPROVED ON FIRST READING: June 12, 2025.

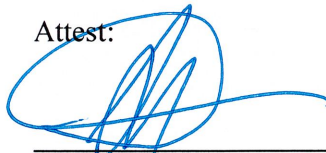
PASSED AND APPROVED ON FINAL READING: June 26, 2025.

CITY OF ELKINS, WEST VIRGINIA



Jerry A. Marco, Mayor

Attest:



Sutton Stokes, City Clerk