

ORDINANCE NUMBER 1417

Weirton Municipal Service Fee Ordinance of 2004

An ordinance of the city of Weirton, Hancock and Brooke Counties, West Virginia, for the assessment and collection of user fees; defining certain terms used herein; providing for enforcement and penalties.

The City Council of the City of Weirton, Hancock and Brooke Counties, West Virginia, under and by virtue of and pursuant to the authority granted by West Virginia Code Section 8-13-13 and Weirton City Charter Article V, Sections 38, 42, 44, 50, and 59, does hereby enact and ordain:

Section I TITLE

This ordinance shall be known and may be cited as the **Weirton Municipal Service Fee Ordinance of 2004**.

Section II POLICY

- (a.) The City Council of the City of Weirton finds that the City provides to all individuals within its borders certain services, whether they are residents employed within the City, or individuals living outside the City and employed within the corporate boundaries of the City.
- (b.) The City Council of the City of Weirton finds that such services include public works, street department functions, street maintenance, capital projects, and public health and safety.
- (c.) The City Council of the City of Weirton finds that such services are within the authority and are the responsibility of the municipal government of the City of Weirton as provided under the general laws of the State of West Virginia.
- (d.) The City Council of the City of Weirton finds that since such services are essential to the creation and maintenance of those jobs which provide livelihood to all individuals employed within the City, as well as to the property interests of residents and visitors to the City, it is therefore, reasonable to derive a portion of the cost of providing and maintaining such services from said individuals.

- (e.) The City Council of the City of Weirton finds that West Virginia Code 8-13-13 provides that every municipality has the plenary power and authority to provide by ordinance for the installation, continuance, maintenance or improvement of such services, to make reasonable regulations with respect thereto, and to improve by ordinance upon the users of such services reasonable rates, fees, and charges to be collected in the manner prescribed in the ordinance.
- (f.) The City Council of the City of Weirton finds that all of those individuals, who use, enjoy and benefit from these services, should bear an equitable share of the costs thereof. Council acknowledges that the Supreme Court of Appeals of West Virginia has recognized that no system of assessing the costs to all users will be absolutely perfect, and that municipalities are only required to install a reasonable system of distributing the costs to all of the users that it can reach through reasonable and prudent means and legislation.
- (g.) The City Council of the City of Weirton finds that: the imposition of the Weirton Municipal Service Fee established herein is a reasonable system of distributing the costs to all of the users that the City can reach through reasonable and prudent means and legislation.

Section III

DEFINITIONS

- (a.) "User" shall mean any person who is employed within the City by an employer located within the City and whose conduct is consistent with that of an employee benefiting from the use of municipal services as stated in Section IV of this Article.
- (b.) "Municipal service or municipal services" shall mean any valuable service provided by the City of Weirton, its departments, boards, commissions, and agents, which shall include, but not be limited to street maintenance and improvement, street lighting, and other valuable City services.
- (c.) "User of municipal services" shall mean any person, as defined in this section, who uses any municipal service, as defined in this section, and who is found or declared to be such a user in Section IV of this Article.
- (d.) "Fee" shall mean the city service fee to be imposed by the provisions of this Article.

- (e.) "Director" shall mean the Finance Director of the City of Weirton or his or her delegate.
- (f.) "Business" shall mean all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect.
- (g.) "City" shall mean the City of Weirton.
- (h.) "Employer" shall mean one who employs the services of others; one for whom employees work and who pays their wages or salaries, maintaining at least one regular office or place of business within the City.
- (i.) "Employee" shall mean one who works for an employer; a person working for salary, wages, or compensation on a full-time or part-time basis at least (30) days per calendar year.
- (j.) "Transient Employee" shall mean an employee who remains for a short period of time and their principle office is not within the Weirton municipality.
- (k.) "Employed" shall include an employee working for an employer and/or a self-employed individual working as a sole proprietor or member of a firm so as to be subject to self-employment tax. An employee shall be considered employed in a calendar week so long as such individual has not permanently discontinued employment within the City.

Section IV

DECLARATION AS TO CONDUCT EVIDENCING THE USE OF A MUNICIPAL SERVICE

Council finds that holding employment with an employer with a place of business located within the City of Weirton for at least thirty (30) days during a calendar year is legal and valid proof of the use of one or more municipal services sufficient to assess and collect a city service fee from the person engaging in the activity stated. However, a transient employee whose principal office is out of the City of Weirton and either pays an employee user's fee or makes remuneration to another municipality for services based upon employment shall be exempt. For purposes of this Article, "employer" shall include all for-profit and not-for-profit entities and all local, county, state, and federal governmental entities.

Section V

IMPOSITION OF CITY SERVICE FEE

- (a.) Effective July 1, 2004 or as soon thereafter as all administrative regulations are filed and distributed to employers within the City of Weirton, there is hereby imposed a city service fee to help defray the cost of providing and maintaining City services within the City. The fee is hereby imposed upon any person who is employed within the City and meets the requirements of a user of municipal services as defined in Section III (a) of this Article. Such person or persons shall be required to pay a city service fee of Two Dollars (\$2.00) PER CALENDAR WEEK.
- (b.) The Finance Director shall record and deposit these revenues as defined in Section XIV of this article.

Section VI **ADMINISTRATIVE REGULATIONS: INVESTIGATIONS AND POWER TO AUDIT**

- (a.) Pursuant to West Virginia Code Section 8-13-13, the Director shall have the authority and responsibility to promulgate reasonable regulations for the collection of the fees imposed by this Article. Said regulations shall include, but not be limited to: 1) regulations setting due dates for all fees; 2) regulations setting forth guidelines for the orderly collection of the fees; 3) regulations requiring employers employing persons within the City of Weirton to collect and remit said fees and supply to the Director any and all information which may include the following: the number of total employees; the number of transient employees; the number of full-time/part-time employees; hire dates and termination dates for new employees or those who have left: employment; names, social security numbers and addresses; 4) regulations requiring employers to collect from their employees and to remit to the Division of Finance the fee imposed herein. Such rules, regulations, and procedures shall be reduced to writing and shall take effect upon being filed in the Office of the City Clerk; 5) the Finance Director may, upon her/his discretion, allow employees to submit information on an annual basis; however, payment of fees shall be made quarterly" and 6) the method of reporting can be done by any means found to be acceptable by the Finance Director.
- (b.) For the purpose of ascertaining the correctness of any information submitted to the Director as required by subsection (a) of this section, and for the further purpose of conducting hearings as provided for in Section X of this Article, the Director, or her/his designee, shall have the power to examine or cause to be examined, any books, papers, records, memoranda, documents and any other payroll data and information, and may take testimony and require material proof with power to administer oaths to any person or persons from whom testimony may be taken. The Mayor or Mayor's designee shall further have the power to issue

subpoenas and subpoenas **duces tecum** in the name of the City of Weirton to compel the attendance of witnesses and the production of books, papers, records, memoranda, documents, and testimony at the time and place specified. Every such subpoena and subpoena **duces tecum** shall be served at least five (5) days before the return date thereof by either personal service made by any credible person over eighteen (18) years of age, or by registered or certified mail, return receipt requested. A return receipt shall be required to prove service by registered or certified mail. The Mayor or Mayor's designee shall have plenary power and authority to further enforce the provisions of this Article by instituting the appropriate civil action in any court of competent jurisdiction pursuant to West Virginia Code Section 8-13-15.

Section VII **DELINQUENT ACCOUNTS**

Each installment of the city service fee shall be due within thirty (30) days from the last day of the reporting period. Fees not received within thirty (30) days of said due date shall be considered delinquent. There shall be added to each delinquent account a penalty of five percent (5%) of the balance thereof on the thirty-first day after the reporting period ends. Thereafter, a penalty of two percent (2%) shall be added to the total outstanding balance at the end of each quarter. These penalties are assessed against the employer.

Section VIII **ENFORCEMENT**

The City Attorney is charged with enforcement of this Article and may institute appropriate legal proceedings in the corporate name of the City and against any employer who fails to collect or remit the fee imposed herein pursuant to West Virginia Code Section 8-13-15.

Section IX **APPEAL BOARD**

There is hereby established a City Service Fee Appeal Board consisting of five (5) members to include the Director of Administration and Finance, who shall serve ex-officio, and four (4) persons employed within the City, two (2) of whom shall be chosen by the Council, and two (2) of whom shall be chosen by the Mayor, and all of whom shall serve a two (2) year term to commence on July 1 and end on June 30 of the second year following their appointments, provided that the initial appointees shall serve a term to commence on July 1, 2004, the effective date of this Article, and to end on June 30, 2006. Any member appointed to fill a vacancy shall serve for the remainder of the unexpired term. The Board shall have the power to correct the amount of fees charged whenever there has been an error of fact in the calculation or billing based upon evidence presented at a protest hearing as provided in this Article. The decision of the Board shall be by a majority vote of all its members. The Board may, as to

questions of law arising in the course of a hearing, request a written opinion from the City Attorney.

Section X **PROTEST AND APPEAL**

Any user who feels aggrieved by any charge to his or her city services fee account may protest the same by filing written notice of such protest with the Director setting forth his or her objections thereto and insuring the payment of the assessed amount. The Director shall review such user's grounds for appeal, render a decision on the protest and forthwith notify the user of such decision in writing within fifteen (15) days of the filing of the protest. If the user is still aggrieved, he may, within fifteen (15) days of the date of the Director's decision, petition the City Service Fee Appeal Board, which shall set a date and time for hearing on the protest, which hearing shall be held within thirty (30) days from the filing of such appeal. The Appeal Board shall hear evidence relevant to the protest and shall render its decision on the issues raised at such hearing within twenty (20) days after the hearing, giving notice of its decision in writing to the user and to the Director. The user may, within thirty (30) days from the date of the decision of the Appeal Board, file a petition, duly verified, with a court of competent jurisdiction, requesting review of the Board's decision. If no such petition is filed within thirty (30) days, the decision of the Appeal Board shall become final and conclusive. Nothing herein shall be construed to prohibit the accrual during the course of the appeal process of any penalty upon the balance of any account ultimately found to be properly charged. A user's appeal shall not be deemed to be upheld if the City or Board fails to meet a deadline contained herein.

Section XI **EMPLOYER RESPONSIBILITY**

It shall be the responsibility of all persons or firms employing persons subject to the city service fee pursuant to section III (a) and (d) of this Article to make quarterly payment and complete reports when required to the Director pursuant to regulations promulgated by the Director and pursuant to the provisions set forth in this Article.

Section XII **SEVERABILITY**

If any section, subsection, subdivision, paragraph, provision, sentence, clause, or word of this Article is for any reason held invalid or unconstitutional, such holding shall not affect the validity, constitutionality, legality, or application of any other portion of this Article.

Section XIII **CONDITIONAL REPEALER OF CERTAIN PROVISIONS**

In the event of the enactment of a statute by the Legislature of the State of West Virginia enabling municipalities in said State to impose a gross wage tax upon all persons employed in such municipalities, or to impose any other tax of a similar nature;

and further, in the event that the City of Weirton shall thereafter impose, by ordinance, such a tax, such ordinance shall also provide for the immediate repealer of this Article, and such repealer shall operate to discontinue the imposition of the city service fee imposed by said Article.

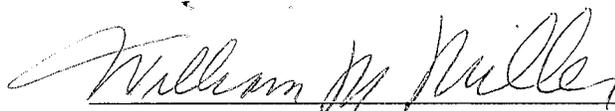
Section XIV **DEDICATION OF REVENUES**

All revenues generated by the city service fee imposed herein are hereby dedicated to public works projects, street department, street maintenance, capital projects, and public health and safety, and shall be deposited into a designated revenue line item in the City's general fund. This dedication follows the uniform chart of accounts as prescribed by the state auditor under the authority of West Virginia Code 6-9-2.

Section XV **FEE IMPOSED IN ADDITION TO POLICE AND FIRE SERVICE FEE IN ORDINANCE NO. 1354**

The fee imposed herein shall be in addition to and independent and exclusive of the fire and police protection services fee imposed under Ordinance # 1354 (Police and Fire Service Fee)

FIRST READING:	<u>November 26, 2003 (Tabled)</u> <u>December 8, 2003 (Tabled)</u> <u>January 12, 2004 (Tabled)</u> <u>February 9, 2004</u>
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MAYOR

ATTEST:

THOMAS J. MAHER, JR., CITY CLERK