

AN ORDINANCE TO AMEND AND REENACT PART SEVEN ENTITLED BUSINESS REGULATIONS AND TAXATION CODE OF THE CODIFIED ORDINANCE OF THE CITY OF WHEELING BY CREATING A NEW ARTICLE, DESIGNATED AS ARTICLE 797 ENTITLED “CITY SERVICE FEE”

Article 797
City Service Fee

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Cross reference: WV Code § 8-13-13

797.01 Findings/ Purpose

- a) The City Council of the City of Wheeling finds that the City provides to all individuals within its border’s certain services, whether they are residents employed within the City, or Individuals living outside the City and employees within the corporate boundaries of the City.
- b) The City Council of the City of Wheeling finds that such services include police protection, fire protection including emergency medical services, and traffic and street infrastructure maintenance and improvements including but not limited to water and sewer utilities, stormwater, curbing, sidewalks, street paving, lighting, street scaping, parking etc.
- c) The City Council of the City of Wheeling finds that such services are within the authority and are the responsibility of the municipal government of the City of Wheeling as provided under the general laws of the State of West Virginia.

- d) The City Council of the City of Wheeling finds that since such services are essential to the creation and maintenance of those jobs which provide livelihoods to all individuals employed within the City, as well as to the property interest of residents.
- e) The City Council of the City of Wheeling 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 impose 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 Wheeling finds that all of those individuals, who use, enjoy and benefit from these services, should bear an equitable share of the costs thereof.
- g) The City Council of the City of Wheeling finds that the imposition of the City 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.
- h) The City Council of the City of Wheeling finds that the Legislature of the State of West Virginia has conferred upon municipalities the plenary power to enact reasonable administrative provisions to ensure the efficient, orderly and equitable implementation and collection of the service fees from all users.
- i) The City Council of the City of Wheeling finds that it is in the best interests of the citizens of the City of Wheeling and the users of City services to enact this Article to impose a City Service Fee.
- j) The City Council of the City of Wheeling finds that there are thousands of individuals who benefit from municipal services who are not owners of property or residents of the City of Wheeling, but who are employed within the City.
- k) The City Council of the City of Wheeling finds that employers located within the City possess important employment information necessary to properly enforce certain aspects and provisions of this Article and that, therefore, reasonable regulations concerning obtaining certain information from such employers shall be a necessary and important part of the administration of the city service fee.

797.02 DEFINITIONS

For the purpose of this Article:

- a) "City" shall mean the City of Wheeling.

- b) "City Finance Director" shall mean the City Finance Director of the City of Wheeling and his or her delegate within the City Finance Department.
- c) "Employee" shall mean any individual who is employed at one or more locations within the City and is on the payroll of an employer, on a full-time or part-time basis for at least thirty (30) days per calendar year, in exchange for salary, wages or other compensation.
- d) "Employed" shall include an employee working for an employer and 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 the employee remains on the current payroll of an employer deriving compensation for such week and the employee has not been permanently assigned to an office or place of business outside the City. A self-employed individual shall be considered employed in a calendar week so long as such individual has not permanently discontinued employment within the City.
- e) "Employer" shall mean any person maintaining at least one regular office or place of business within the City for whom employees work within the City and who pays employees compensation subject to any federal or state employment or wage withholding requirement. "Employer" includes all for-profit and not-for-profit entities and all local, county, state and federal governmental entities.
- f) "Fee" shall mean the city service fee to be imposed by the provisions of this Article.
- g) "Municipal service or municipal services" shall mean any valuable service provided by the City, its departments, boards, commissions and agents.
- h) "Self-employed individual" shall mean an individual who is subject to federal self-employment tax and conducts business at one or more regular office or place of business within the City, on a full-time or part-time basis for at least thirty (30) days per calendar year.
- i) "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 this Article.
- j) "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 797.03 of this Article.

797.03 DECLARATION AS TO CONDUCT EVIDENCING THE USE OF A MUNICIPAL SERVICE

The City Council of the City of Wheeling declares that holding employment for at least thirty (30) days per calendar year at any regular office or place of business located within the City 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 individual engaging in the activity stated.

797.04 IMPOSITION OF FEE; RATE

There is hereby imposed a city service fee upon each employee and self-employed individual at the fee rate of two dollars (\$2.00) per calendar week of employment within the City. Beginning January 1, 2020 and shall remain in effect and continuing thereafter. No individual shall pay the fee more than once for the same week of employment regardless of multiple employment.

797.05 EFFECTIVE DATE

The imposition of the city service fee shall take effect beginning January 1, 2020.

797.06 ADMINISTRATIVE REGULATIONS

The City Finance Director shall promulgate reasonable regulations for the collection of the fees imposed by this Article:

- a) Said regulations shall include, but not be limited to:
 1. Regulations setting due dates for all remittance of fees to be collected and paid hereunder, it being the intent of City Council that due dates with respect to employers be coordinated to the extent feasible with other wage withholding payment obligations of employers;
 2. Regulations setting forth guidelines for the orderly collection and payment of the fees by employers and self-employed individuals;
 3. Regulations requiring an employer employing employees within the City to withhold, collect and remit fees relative to such employee and supply to the City Finance Director any and all information which may include 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; and
 4. Any needful regulations explaining and clarifying the provisions of this Article.
- b) Such regulations shall be reduced to writing and shall take effect upon being filed in the Office of the City Clerk and the City Finance Department.

797.07 INVESTIGATIONS; POWER TO AUDIT

For the purpose of ascertaining the correctness of any information submitted to the City Finance Director as required by Section 797.06 of this Article:

- a) The City Finance Director 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.
- b) The City Finance Director shall have the power to issue subpoenas and subpoenas duces tecum in the name of the City to compel the attendance of witnesses and the production of books, papers, records, memoranda, documents and testimony at the time and place specified.
- c) The City Finance Director 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.

797.08 DELINQUENT ACCOUNTS; PENALTIES

Payment of fees not received upon the due date shall be considered delinquent. The City Finance Director shall assess each delinquent account a penalty of five percent (5%) of the balance thereof. If the delinquency exceeds a month, an additional penalty of two percent (2%) shall be added to the total outstanding delinquent fee at the end of each additional month or part thereof. Without limiting the generality of the foregoing, the delinquency penalty may be assessed against any employer responsible for withholding and remitting the fee of any employee subject to the fee imposed in this Article. The City Finance Director after consulting with the City Manager may waive or abate the penalty hereunder for reasonable cause.

797.09 FEE CONSTITUTES DEBT; LIEN CREATED

- a) Any fee and accumulated penalties due and payable under this article shall be a debt due the City. It shall be a personal obligation of the fee payer and shall be a lien upon the real and personal property of the fee payer. This lien shall have priority over all other liens except those due the State of West Virginia and the United States of America.
- b) The lien created by this section shall continue until the liability for the fee and accumulated penalties is satisfied. The City Finance Director, in conjunction with the City Legal Department, shall issue his certificate of release of any lien imposed pursuant to this section upon finding that the liability for the amount assessed has been fully satisfied or has become legally unenforceable.
- c) The lien created by this section shall be subject to the conditions and restrictions in Chapter 38, Article 10 C of the State Code of West Virginia.

797.10 ENFORCEMENT

The City Finance Director is charged with administration and enforcement of this Article and may, among other remedies, and in conjunction with the City Legal Department institute appropriate legal proceedings in the name of the City and against any self-employed individual or employer who fails to pay, collect or remit the fee imposed herein.

797.11 PROTEST; ADMINISTRATIVE DECISION; APPEAL

- a) Any user who has paid the fee imposed by this article shall file a claim for refund no later than thirty (30) days after the fee is paid over to the City by written notice of such claim with the City Finance Director setting forth with particularity all objections thereto. The burden of proof shall be upon the aggrieved party to show that the fee was paid and is incorrect and contrary to law, in whole or in part. The City Finance Director shall review the refund claim and provide for any necessary hearing, render a decision on the claim and forthwith either notify the user of such decision in writing or direct that a refund be issued, all within a reasonable time. Said decision shall be issued by certified mail, return receipt requested.
- b) If aggrieved by the decision of the City Finance Director, the protesting party may appeal the decision of the City Finance Director to the Circuit Court of Ohio County within thirty (30) days after service of the City Finance Director's decision.
 1. The appeal shall be taken by the filing of a petition and notice, which petition and notice shall be served upon or accepted by the City Finance Director as an original notice. When the petition and notice is so served it shall, with the return or acceptance thereon, be filed in the Office of the Clerk of the Ohio County Circuit Court and docketed as other cases, with the aggrieved party as plaintiff and the City Finance Director as defendant.
 2. The filing of the appeal shall not stay the collection of the fee unless the collection of the fee shall be stayed if the plaintiff shall file with such clerk a bond for the use of the defendant, with sureties approved by the Clerk of the Circuit Court of Ohio County, the penalty of the bond to be not less than the total amount of the fee, and accumulated penalties to the date of the appeal, and conditioned that the plaintiff shall perform the orders of the Ohio County Circuit Court; provided, that the Judge of the Ohio County Circuit Court may stay the collection of the fee, and accumulated penalties without the requirement of a bond, upon a proper showing by the plaintiff that the properties of the plaintiff are sufficient to secure performance of the Ohio County Circuit Court's orders or that the ends of justice will be served thereby.
 3. The Ohio County Circuit Court shall hear the appeal and determine anew all questions submitted to it on appeal from the decision of the City Finance Director. In such appeal a certified copy of the City Finance Director's fee

assessment shall be admissible and shall constitute prima facie evidence of the fee due under the provisions of this article. The Ohio County Circuit Court shall render its decree thereon, and a certified copy of the decree shall be filed by the Clerk of the Ohio County Circuit Court with the City Finance Director, who shall then collect the assessment, if necessary, in accordance with such decree.

- c) The remedies set forth in this Section are exclusive. Failure to timely file a refund claim in accordance with this Section shall preclude any right to refund with respect to any fee paid to the City prior to the claim. If no appeal is taken pursuant to this section within thirty (30) days after service of the City Finance Director's decision, said decision shall become final and conclusive and not subject to administrative or judicial review. The amount of the fee and accumulated penalties, if any, due the City under such decision shall be due and payable on the day following the date upon which such decision becomes final.

797.12 EMPLOYER RESPONSIBILITY

It shall be the responsibility of all employers employing employees subject to the city service fee pursuant to Section 797.04 of this Article to make all scheduled payments and reports as required pursuant to the regulations promulgated by the City Finance Director and pursuant to the provisions of this Article. Any employer that willfully fails to withhold and remit fees it is required to collect shall be liable to the City for the amount of fees it fails to so withhold and collect together with penalties as provided in Section 797.08.

797.13 DEDICATION OF REVENUES

All revenues generated by the city service fee imposed herein are hereby dedicated to and shall be deposited into a special fee account in the City treasury to be exclusively utilized for police protection fire protection and emergency medical services related thereto and street maintenance and public works projects as further noted in Section 797.01 (b) of this Article, and any costs related to the imposition and processing of this fee.

797.14 SEVERABILITY

If any section, subsection, subdivision, paragraph, provision, sentence, clause, or word in 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.

797.15 SUNSET PROVISION

The City Service Fee created and enacted by this Article shall sunset in, 2045 being twenty-five (25) years after initial implementation of such fee.