

CITY OF FAIRMONT

NON-RESIDENT EMPLOYEE STREET MAINTENANCE AND IMPROVEMENT
CHARGE
ADMINISTRATIVE REGULATIONS

1.0 Employer Responsibility

- 1.1 The burden for payment of the Street Maintenance and Improvement Charge under Ordinance No. 1522 is imposed on the employee who benefits from the Municipal services as defined in Ordinance No. 1522 provided by the City of Fairmont. Employers of employees working in the City of Fairmont conducting business in the City of Fairmont are required to collect and remit the charge and maintain records as provided in these regulations on behalf of their employees who are subject to the Street Maintenance and Improvement Charge imposed by Ordinance No. 1522.
- 1.2 Each employer who employs one or more non-resident employee(s), either full-time or part-time within the City of Fairmont shall on behalf of the employee deduct from the compensation of the employee at the time the payment of compensation is due the employee, the amount of the weekly service charge provided in Ordinance No. 1522, two dollars (\$2.00) per calendar week. Allowing for those situations where employees are paid other than weekly, it is appropriate for the employer to deduct from the compensation of their employees four dollars and thirty-three cents (\$4.33) if paid twice a month, four dollars (\$4.00) if paid every other week, and eight dollars and sixty-seven cents (\$8.67) if paid monthly.
- 1.3 The employer shall report to the Director of Finance on Forms SMC-01 and SMC-02, Street Maintenance Charge Remittance Form and Employer Worksheet, for a partial quarterly period beginning August 1, 2011 through September 30, 2011. October 1, 2011 through December 31, 2011 will be the second quarterly period reported and will be the first full quarterly period of charges. Succeeding quarterly periods will begin each January 1st, April 1st, July 1st, and October 1st. The report shall be filed with the Finance Department within thirty (30) days of the end of the reporting quarter. The first report is due on or before October 30, 2011. 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 (31) day after the reporting period ends. Thereafter, a penalty of one and one half percent (1.5%) shall be added to the total outstanding balance at the end of each quarter. At the time of filing, the employer shall make the payment of the amount withheld on behalf of each employee pertaining to the quarterly period. The penalties are assessed against the employer.
- 1.4 The forms to be used in the reports required above shall be prepared by the Director of Finance and made available to the employees within the City of Fairmont at the Finance Department. If requested, forms may be mailed to employers by the Finance Department. Otherwise forms are on the City of Fairmont's website at www.fairmontwv.gov. Forms can be photocopied. Failure to receive the forms shall not in way reduce the liability of the employer under provisions of Ordinance No. 1522 to report and remit the Non-Resident Employee Street Maintenance and Improvement Charge.

- 1.5 All employers with non-resident employees employed within the City of Fairmont shall maintain a full and complete typed record of the names, Social Security numbers, addresses, weeks, worked, hire and termination dates, and a full or part-time status of all employees who work within the City of Fairmont for any period of time during the preceding quarter, coinciding with the remittance for that quarter.
- 1.6 Each employer with non-resident employees within the City of Fairmont shall, within thirty (30) days of the end of a quarter, submit to the Director of Finance a summary of the records as shown in regulation 1.5 and reported on Form SMC-02, *Employer Worksheet* and remit amounts due as reported on Form SMC-01, *Remittance Form* for the preceding quarter. Quarter end dates include March 31st, June 30th, September 30th, and December 31st of each calendar year. The first reporting due date shall therefore be October 30, 2011 which shall include reporting months of August, 2011 and September 30, 2011. Succeeding due dates for reporting purposes shall be January 30, 2011 for quarter ending December 31, 2011 and April 30th for quarter ending March 31st, July 30th, for quarter ending June 30th and October 30th for quarter ending September 30th of each year.
- 1.7 Section 9 of Ordinance No. 1522 gives the Finance Director or his/her designee the power to examine or cause to be examined any books, papers, records, memoranda, documents, and any other payroll data and information.
- 1.8 For non-resident employees who work more than one job within the City of Fairmont's corporate limits, it is only required for one employer to withhold the Street Maintenance and Improvement Charge. The employee may choose which employer withholds the charge and should complete Form SMC-04, *Prior Payment Form*. This form is kept on file with the employer to which it is presented. The employee's pay stub will be proof to the other employer(s) that the charge is being withheld so as not to withhold the fee by more than one employer.
- 1.9 It is the employers' responsibility to notify their employees that this payroll deduction is required and will be made beginning August 1, 2011, and will continue each pay thereafter as the ordinance remains in effect. The employer should refer them to the City of Fairmont to answer questions pertaining to the Non-Resident Street Maintenance and Improvement Charge.

2.0 Exemption of Imposition of Fee

- 2.1 Any person who pays a user fee or makes remuneration to another municipality for services based upon employment shall be exempt from payment of the Street Maintenance and Improvement Charge.
- 2.2 Any person who is domiciled within the corporate limits of the City of Fairmont shall be exempt from payment of the Non-Resident Street Maintenance and Improvement Charge.
- 2.3 Any person who owns a business and who pays the charge on the City service bill in name of the business shall be exempt from payment of the Non-Resident Street Maintenance and Improvement Charge but there is only one exemption allowable.

- 2.4 Any person who is domiciled outside the corporate limits of the City of Fairmont and works for an employer who is domiciled inside the corporate limits but who reports to work and works exclusively at a location outside the corporate limits of the City of Fairmont shall be exempt from payment of the Non-Resident Street Maintenance and Improvement Charge.
- 2.5 If an employee claims an exemption for reasons stated in Section 2.1-2.4 above, the employee should complete Form SMC-05, *Exemption Claim Form*. This form is kept on file with the employer to which it is presented. The employee must also provide proof of exemption to the employer in the form of a City of Fairmont service bill or a receipt of payment for services to another municipality. If the employee cannot provide City of Fairmont service bill, other documentation of domicile is acceptable such as another utility bill in the employee's name and with service at the local address, a copy of a lease agreement, a copy of a valid student ID card or other document listing the local address, or a copy of a credit card bill, valid driver's license and other forms of identification listing the local address. A business owner claiming exemption should provide proof in the form of a City of Fairmont service bill in name of the business. The employer will not withhold the charge from the employee as long as circumstances remain the same.

3.0 Remittance of Underpayment

- 3.1 Each employer with non-resident employees within the City of Fairmont who is notified of or discovers an underpayment of the Street Maintenance and Improvement Charge will correct the previously submitted returns which show the underpayment and shall submit to the Director of Finance in full any underpayment within ten (10) days of discovery or notification of underpayment along with any penalty and interest due as provided in Ordinance No. 1522 or administrative regulation 1.3.

4.0 Refund Claimed

- 4.1 Any employer and/or self-employed individual who collects the Street Maintenance and Improvement Charge required by Ordinance No. 1522 in error from a non-resident employee and who has not yet reported or remitted the amount due to the City of Fairmont shall refund the amount collected in error to the employee and adjust the report to properly reflect the amount due the City of Fairmont. If the employer has already reported in error and remitted in error to the City of Fairmont, the employer should direct the employee to file a request for refund with the City of Fairmont on Form SMC-03 *Refund Claim Form*. The employee must attach all pertinent documentation. The Director of Finance shall review such employee's request for credit, render a decision on the request and forthwith notify the user of such decision in writing within 20 days of the filing of the request . The *Refund Claim Form* must be filed with the Director of Finance within one hundred (120) days after the due date of the remittance.

5.0 Liability of Employers Who Fail to Comply

- 5.1 Any employer and or/ self-employed individual who fails to collect the Street Maintenance and Improvement Charge required by Ordinance No. 1522 or fails to properly remit such charge to the City of Fairmont, said employer shall be liable for such amount as he failed to collect or remit.
- 5.2 Any corporate officer, employer, and/or self-employed individual with non-resident employees within the City of Fairmont who shall willingly fail or refuse to file forms required under these regulations or attempt in any manner to evade or defeat the payment of the Street Maintenance and Improvement Charge required under Ordinance No. 1522 or these administrative regulations shall upon conviction thereof be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00).
- 5.3 The City Attorney has the power to institute appropriate legal proceeding in the corporate name Of the City.

6.0 Late Remittance

- 6.1 The Director of Finance shall have the authority to resolve Street Maintenance and Improvement Charge controversies to the extent of waiving a penalty where it is shown to the satisfaction of the Director of Finance that failure to file or pay in a timely fashion is due to reasonable cause and not willful neglect. The Director of Finance has no authority to waive any Street Maintenance and Improvement Charge due or payable. No waiver of penalty shall be allowed due to failure of the employer to secure the necessary forms. Further, ignorance of the law shall not be ground for waiver of penalty.

7.0 Protest and Appeal

- 7.1 Any user of municipal services who feels aggrieved by any charge to his or her Street Maintenance and Improvement Charge account may protest the same by filing written notice of such protest with the Director of Finance setting forth his or her obligations thereto and making payment under protest of the assessed amount. The Director shall review such user's grounds for protest, render a decision on the protest and forthwith notify the user of such decision in writing within 15 days of the filing of the protest. If the user is not satisfied by the Director's decision or is still aggrieved, he or she may petition the Judge of the Municipal Court for review of the Director's decision.

The petition for review must be filed with the Municipal Court Clerk on or before 3:00 pm prevailing time within 25d days of the date of the mailing of the Director's decision. If the 25th day shall fall on a Saturday, Sunday or legal holiday, the filing period shall be extended to 3:00 pm prevailing time on the next regular business day. The petition for review must be in writing and be verified under oath by the petitioner. The petition for review must set forth with particularity the portions of the Director's decision objected to or contested and the petition for review must further state the reasons for each objection or contested fact. Fairness and equity shall not be issues. The petition for review must state an address of the petitioner for purposed of

service of all papers and hearing notices. The petition for review must set out a copy of the Director's decision or have a copy of said decision attached thereto.

Upon the timely filing of a petition for review, timeliness being jurisdictional, the Municipal Court Clerk shall assign the petition for review a case number.

The petitioner, at the time of filing the petition for review, must serve a copy of the petition for review upon the Director.

The Director shall have twenty (20) days from the date of receipt of the petition for review to file an answer with the Municipal Court Clerk stating the nature of the case, the facts relied upon by the Director and answer to each issue presented for review. The Finance Director shall serve a copy of the answer upon the petitioner.

Upon receipt of the answer, the Municipal Court Clerk shall assign a time and place for a hearing before the Judge of the Municipal Court and shall provide written notice of the hearing to the Director and to the petitioner at the address provided in the petition for review.

The hearing before the Judge of the Municipal Court is heard de novo, however, fairness and equity shall not be issues. The burden of proof shall be on the petitioner. The decisions of the Judge of the Municipal Court shall be in writing and contain a statement of findings of material fact and conclusions of law. The Judge of the Municipal Court has authority to affirm, reverse, modify, or vacate the decision of the Director. All decisions of the Judge of the Municipal Court must be issued within a reasonable time, not to exceed thirty (30) days from close of the hearing. Unless a timely appeal is taken to the Circuit Clerk of Marion County, the decision of the Judge of the Municipal Court shall be final and conclusive and not subject to the additional review.

- 7.2 Either party may petition for appeal of the decision of the Judge of the Municipal Court to the Circuit Court of Marion County, West Virginia as provided by law.