

ORDINANCE NO. 1812

AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING THE PROVISIONS OF ORDINANCE NO. 1534, AS AMENDED BY ORDINANCE NO. 1795, CODIFIED AS ARTICLE 920 OF PART NINE STREETS, UTILITIES AND PUBLIC SERVICES CODE, CHAPTER ONE STREETS AND SIDEWALK AREAS OF THE FAIRMONT CITY CODE TO INCLUDE THE ESSENTIAL MUNICIPAL OR PUBLIC SERVICE OF POLICE PROTECTION FOR WHICH THE FUNDS, MONEYS, AND REVENUES RECEIVED FROM THE COLLECTION OF THE CHARGES ESTABLISHED BY SAID ARTICLE MAY BE USED

WHEREAS, the provisions of West Virginia Code §8-13-13 authorize that a municipality which provides essential or special services, including, but not limited to, police . . . protection, and . . . street maintenance and improvement . . . may, by ordinance, provide for the improvement of said essential services, make reasonable regulations regarding said services, and impose upon the users of the service reasonable rates, fees and charges to be collected in the manner specified in the ordinance;

WHEREAS, the Council of the City of Fairmont has imposed a special charge upon the users of the municipal streets and roadways for street maintenance and improvement and now deems it necessary to amend said ordinance to include the essential municipal service of police protection as a service for which the funds, moneys and revenues received from the collection thereof may be utilized in order to partially defray the cost of providing the essential public service of police protection;

WHEREAS, Council for the City of Fairmont finds that amending said ordinance to include the essential municipal service of police protection in order to partially defray the cost of providing the essential public service of police protection is a reasonable system of distributing the cost to all of the users of the essential services described above that the City can reach through reasonable and prudent legislation and reasonable and prudent means.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF FAIRMONT THAT:

Article 920 Street Sweeping Fee of Part Nine Streets, Utilities and Public Services Code, Chapter One Streets and Sidewalk Areas of the Fairmont City Code be and is hereby amended and supplemented as follows: (Matter to be deleted bracketed; new matter double underlined).

PART NINE: STREETS, UTILITIES AND PUBLIC SERVICES CODE

CHAPTER ONE: STREETS AND SIDEWALK AREAS AND POLICE PROTECTION

ARTICLE 920 STREET SWEEPING, AND STREET MAINTENANCE AND

IMPROVEMENT [CHARGES] AND POLICE PROTECTION CHARGES

SECTION 1. DECLARATION AND FINDING

The Council of the City of Fairmont hereby finds that:

In the judgment of the Council, the public health, safety, welfare and well-being of all users of the streets and roadways within the corporate limits of the City of Fairmont, which include non-resident employees, residents and business interests, demand the continuation of the essential municipal service of street sweeping in an environmentally sound and proper manner, and the essential municipal service of street maintenance and improvement, namely the proper, curbing, draining, maintenance, repair, paving and re-paving thereof, and the continued ability of the City of Fairmont to provide police protection at current levels.

Council finds that the general public revenues of the City of Fairmont are not sufficient for the purpose of providing for the environmentally sound and proper disposal of the waste material generated from the street sweeping operations of the City of Fairmont or to provide for the essential municipal service of street maintenance and improvement, namely the proper, curbing, draining, maintenance, repair, paving and re-paving thereof, and at the same time continue to provide for police protection at current levels and it appears necessary under the provisions of West Virginia Code §8-13-13, to impose upon the users of said services fees that are just, equitable and provide sufficient revenues therefor.

In order to improve said essential services, to better meet the obligations of government, including providing police protection, to provide for the preservation, continuation and creation of jobs, to provide for the safe travel of the users of said services, to preserve and enhance real property values, and to lessen incidents of personal property damage, among others, the City must provide for continued street sweeping in a proper and an environmentally sound manner; further provide for the curbing, draining, repair, maintenance, paving and repaving of the streets and roadways within the corporate limits in a significant manner and in a reasonable cycle; and further provide for police protection at current levels, all of which is in the City's best interest; and

The imposition of the special charges established herein for the essential services described above are reasonable, fair, equitable and based upon a reasonable allocation of the use of said service among and between the users thereof and provides a reasonable system of distributing the cost to all of the users of the essential service described above that the City can reach through reasonable and prudent legislation and reasonable and prudent means.

SECTION 2. DEFINITIONS For purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS. All activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect.

CITY. The City of Fairmont.

DIRECTOR. The Finance Director of the City of Fairmont or his or her delegate.

DOMICILE. The true, fixed and permanent home and principal establishment to which

whenever a person is absent he/she has the intention of returning; the established, fixed, permanent, or ordinary dwelling place or residence of a person, as distinguished from his/her temporary or transient although actual place of residence.

EMPLOYED. Employed shall mean an employee working for an employer. An employee shall be considered employed in a calendar week so long as such individual has not permanently discontinued employment within the corporate limits of the City of Fairmont.

EMPLOYEE. Any person who works for an employer or any person who works for a salary, wage, or other compensation or remuneration on a full-time or part-time basis and who works within the corporate limits of the City of Fairmont.

EMPLOYER. Employer shall mean an individual person, including a self-employed individual working as a sole proprietor or member of a firm so as to be subject to self-employment tax, and every entity, including but not limited to a business corporation, a corporation not for profit, a partnership, a charitable organization, a limited liability company, a limited liability partnership, a professional corporation, a professional limited liability company, a professional limited liability partnership, a tax exempt organization, and every governmental entity, including every local, county, state and federal governmental entity, who employs the services of an employee or employees, or for whom an employee or employees work, or who pays the wages or salaries of an employee or employees.

NON-RESIDENT EMPLOYEE. Any person who, at the time the service or services described herein are rendered by the City of Fairmont, is domiciled outside the corporate limits of the City of Fairmont but who is an employee of an employer or any other person whose conduct is consistent with that of an employee benefiting from the use of municipal services.

RESIDENT: Any person who maintains a residence in the corporate limits of the City of Fairmont regardless of whether he or she is domiciled in the corporate limits of the City of Fairmont and any business that maintains a place of business within the corporate limits of the City of Fairmont and which said person or business has a residential, commercial or industrial customer account with the City of Fairmont.

STREET MAINTENANCE AND IMPROVEMENT AND POLICE PROTECTION CHARGE. The special charge for the valuable essential municipal service of street maintenance and improvement and to partially defray the cost of providing the essential public service of police protection [to be] imposed by the provisions of this article.

STREET SWEEPING CHARGE. The special charge for the valuable essential municipal service of street sweeping and the proper disposal of waste material resulting from the street sweeping operations of the City of Fairmont to be imposed by the provisions of this article.

USER OF MUNICIPAL SERVICES. Any person whose conduct is consistent with that of an individual benefiting from the use of municipal services or is found or declared to be such a user.

SECTION 3. SPECIAL CHARGES ESTABLISHED AND IMPOSED

A Street Sweeping Charge. For services rendered on or after the effective date of this Ordinance for the essential municipal service of street cleaning and the proper disposal of the material generated thereby there is hereby imposed, established and charged upon each resident who maintains a residential, commercial and industrial customer account of the City of Fairmont a special charge of ninety cents (\$.90) per month.

B. Resident Street Maintenance and Improvement [Charge] and Police Protection Charge. For services rendered on or after the effective date of this Ordinance for the essential municipal service of street maintenance, repair, curbing, draining, paving and repaving paving and police protection there is hereby imposed, established and charged upon each resident who maintains a residential, commercial and industrial customer account of the City of Fairmont a special charge of eight and 67/100 dollars (\$8.67) per month.

C. Non-Resident Employee Street Maintenance and Improvement [Charge] and Police Protection Charge

(1) For service rendered on or after the effective date of this Ordinance or as soon thereafter as all administrative regulations are filed with the City Clerk for the essential municipal service of street maintenance, repair, curbing, draining, paving and repaving and police protection there is hereby imposed, established and charged upon each non-resident employee employed within the corporate limits of the City of Fairmont by an employer, a special charge of two and 00/100 dollars (\$2.00) per week.

(2) Exemptions from Non-Resident Employee Street Maintenance and Improvement [Charge] and Police Protection Charge:

A. If any such non-resident employee required to pay the special charge hereby imposed is employed by more than one employer, he/she shall be required to pay only one (1) special charge.

B. Reserved

SECTION 4. DECLARATION AS TO CONDUCT EVIDENCING THE USE OF THE MUNICIPAL SERVICE.

The Council for the City of Fairmont finds that all residents and all non-resident employees employed within the corporate limits of the City of Fairmont meet the definition of a user of municipal services and that such residency or employment within the corporate limits is legal and valid proof of the use of and/or benefit from the municipal service sufficient to assess and collect the special charges herein established from said resident and or non-resident employee.

SECTION 5. COLLECTION

A. The charges imposed, established and charged by this article shall be collected, recorded and deposited by the Director.

B. The charges imposed, established and charged by Section 3A and 3B of this article shall be collected from each residential, commercial and industrial customer of the City of Fairmont in monthly or bi-monthly installments.

C. The charges imposed, established and charged by Section 3 C of this article shall be collected from each non-resident employee by the employer. It shall be the responsibility of all employers employing employees subject to said charge to make quarterly payments of the amounts collected to the Director and complete any reports required by the Director pursuant to regulations promulgated by the Director and pursuant to the provisions set forth in the article. If any employer fails to collect the street maintenance and improvement fee established and imposed by this ordinance or fails to properly remit such fee to the City of Fairmont, said employer shall be liable for such amount as he failed to collect and/or remit.

SECTION 6. DELINQUENT PAYMENT; DISCOUNTS.

(A) A penalty of ten percent (10%) of the charge established by Section 3A and 3B of this article shall be added for any default for a period of thirty days or less in payment of such charge, and for each succeeding thirty days elapsing thereafter until payment is received there shall be an additional penalty of one and one-half percent (1.5%); provided that a discount of five percent (5%) shall be allowed on bi-monthly installments if paid within twenty days of the billing date.

(B) Each installment of the charge established Section 3C of this Article shall be due within 30 days from the last day of the reporting period. Charges not received within 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 31st day after the reporting periods ends. Thereafter, a penalty of on and one-half percent (1.5%) shall be added to the total outstanding balance at the end of each quarter. These penalties are assessed against the employer.

(C) The Director shall collect any principal, interest, and penalty due and unpaid by any and all lawful means.

SECTION 7. USE OF FUNDS/DEDICATION OF REVENUES

The funds, moneys and revenues received from the collection of the charges provided for in Section 3A of this article shall be used only for the purpose of continuing and maintaining the essential municipal service of street cleaning and the proper disposal of the material generated thereby and no part of such funds, moneys and revenues shall be used for any other purpose.

The funds, moneys and revenues received from the collection of the charges provided for in Section 3B and Section 3C of this article shall be used [only] for the following purposes: [purpose of]

(A) [c] Curbing, draining, repair, maintenance, paving and repaving of the streets and roadways within the corporate limits[.]; and [No part of such funds, moneys and revenues shall be used for any other purpose.]

(B) To partially defray the cost of providing the essential public service of police protection.

No part of such funds, moneys and revenues shall be used for any purpose except those

enumerated above.

All revenues shall be accounted for in the appropriate designated revenue line items in the city's general fund. This dedication shall follow the uniform chart of accounts as prescribed by the State Auditor under the authority of W. Va. Code §6-9-2.

SECTION 8. REFUSAL TO PAY

No person shall refuse to pay the fee provided for herein or aid or abet in the avoidance of the payment of such fee.

SECTION 9. ADMINISTRATIVE REGULATIONS; INVESTIGATIONS AND POWERS TO AUDIT.

A. Pursuant to West Virginia Code §8-13-13, the Director shall have the authority and responsibility to promulgate reasonable regulations for the collection of the charges 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 fees.
- (3) Regulations requiring employers employing persons within the City of Fairmont to collect and remit said fees and supply to the Director any and all information which may include the following:
 - (a) The number of total employees;
 - (b) The number of exempt employees, if any;
 - (c) The number of full-time/part-time employees;
 - (d) Hire dates for new employees and termination dates for those who have left employment;
 - (e) Names and addresses.
- (4) Regulations requiring employers to collect from their employees and to remit to the Department of Finance the fees 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 Director, may, upon his/her discretion, allow employees to submit information on an annual basis; however, payment of fees shall be made quarterly.
- (6) The method of reporting shall be done by such means found to be acceptable to the Director.

(B) For the purposes of ascertaining the correctness of any information submitted to the Director as required by division (A) above, the Director, or his/her 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 Director shall further 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 for purposes of said audit. Every such subpoena and subpoena duces tecum shall be served at least five days before the return date thereof by either personal service by any credible person over 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.

SECTION 10. ENFORCEMENT.

In addition to any other remedy which may be provided by law, 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 or other person who fails to comply with the provisions of this Article.

SECTION 11. PROTEST AND APPEAL.

(A) Any user of municipal services who feels aggrieved by any charge made pursuant to this article may protest the same by filing written notice of such protest with the Director setting forth his or her objections 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.

(B) The petition for review must be filed with the Municipal Court Clerk on or before 3:00 p.m. prevailing time within 25 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 p.m. 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 purposes 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 an 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 the close of the hearing. Unless a timely appeal is taken to the Circuit Court of Marion County, the decision of the Judge of the Municipal Court shall be final and conclusive and not subject to additional review.

(C) 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.

SECTION 12. 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.

SECTION 13. PENALTY.

It shall be unlawful for any person to refuse to pay, collect or remit the street maintenance and improvement fee herein provided to be paid, collected and remitted or to refuse to make any filings required by this ordinance, or to make any false or fraudulent filing or false statement in any filing with the intent to defraud the City, or to evade the payment of the street maintenance and improvement fee or any part thereof; or for any person to aid or abet another in any attempt to evade the payment of the fee, or for any officer or partner or principal of any entity to make any false filing or any false statement in any filing with the intent to evade the payment of the street maintenance and improvement fee.

Whoever willfully violates any provisions of this article shall upon conviction thereof, be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00).

SECTION 14. SAVINGS CLAUSE.

The provisions of this ordinance shall become effective as hereinafter set forth. For all matters which may have arisen prior to said effective date, the former provisions of this Article shall apply and to that extent are hereby saved.

This Ordinance shall become effective thirty (30) days after adoption.

Notwithstanding the effective date of this Ordinance, the modifications, supplements and

amendments provided for herein shall not become operative until July 1, 2019.

Adopted this the 14th day of May, 2019.

MAYOR

ATTEST:

CITY CLERK

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING THE PROVISIONS OF ORDINANCE NO. 1534, AS AMENDED BY ORDINANCE NO. 1795, CODIFIED AS ARTICLE 920 OF PART NINE STREETS, UTILITIES AND PUBLIC SERVICES CODE, CHAPTER ONE STREETS AND SIDEWALK AREAS OF THE FAIRMONT CITY CODE TO INCLUDE THE ESSENTIAL MUNICIPAL OR PUBLIC SERVICE OF POLICE PROTECTION FOR WHICH THE FUNDS, MONEYS, AND REVENUES RECEIVED FROM THE COLLECTION OF THE CHARGES ESTABLISHED BY SAID ARTICLE MAY BE USED

SYNOPSIS

By this proposed ordinance Council renames the City's current Street Maintenance and Improvement Charge as the Street Maintenance and Improvement and Police Protection Charge, and expands the uses for which the funds, moneys and revenues received from the collection of the charge shall be used, which are as follows:

(A) Curbing, draining, repair, maintenance, paving and repaving of the streets and roadways within the corporate limits; and

(B) To partially defray the cost of providing the essential public service of police protection.

There is no increase in the fee.