

**AN ORDINANCE CREATING A NEW ARTICLE 745 IN THE CITY CODE TO
ESTABLISH A SERVICE FEE FOR PUBLIC RIGHTS-OF-WAY AND POLICE
SERVICES**

The City of Morgantown hereby ordains that a new Article 745 is established within City Code as follows:

SECTION 745.1. PURPOSE

The City Council of the City of Morgantown finds and concludes as follows with respect to the service fee established by this Article:

- (a) The improvement and maintenance of the public rights-of-way is an essential municipal service provided by the City which is necessary to ensure public health, safety, and welfare;
- (b) The provision of police protection services is likewise an essential municipal service provided by the City which is necessary to promote ensure public health, safety, and welfare;
- (c) These services are enjoyed by both residents and nonresidents of the City who travel within the City due to their use of the public rights-of-way for transportation and their reliance on municipal police services to respond to and prevent criminal activity;
- (d) These services are essential to the conduct of business, educational, and nonprofit institutions with the City, and to the safe travel of the employees, customers, and attendees of such institutions;
- (e) The cost of funding these essential services should be supported, so far as reasonably possible, by the users of the services;
- (f) West Virginia Code section 8-13-13 grants municipalities that furnish essential services, including the maintenance and improvement of the public rights-of-way and the provision of police protection services, the plenary power and authority to provide for the installation, continuance, maintenance or improvement of the services, to make reasonable regulations of the services, and to impose by ordinance upon the users of the services reasonable rates, fees and charges to be collected in the manner specified in the ordinance;
- (g) This ordinance creating Article 745 of the City Code and establishing a service fee for the service identified in this Section is designed to place upon users of the services a fee reasonably related to the use of the services;
- (h) A substantial portion of the users of these services are nonresidents of the City who are employed within the City, and employers within the City are in possession of important employment information essential to the efficient and effective collection of the service fee;

- (i) The reasonable regulations to be established under this ordinance for employer withholding and remittance of the service fee are central to the effective collection of the service fee from all service users, which promotes equity in the funding of these essential services;
- (j) It is in the best interest of the City, its residents, and the users of these essential services to impose the service fee to appropriately fund the services;
- (k) The fee established by this ordinance is designed to bear a direct and reasonable relationship to the actual services provided in exchange for the fee;
- (l) The fee is warranted based on the anticipated use of these essential services by the defined class of users due to their regular travel within the City, and the fee will not impose an unfair or burdensome collection upon the users based on their use of the services.

SECTION 745.2. DEFINITIONS

The following definitions apply to this Article 745:

- (a) “City” shall mean the City of Morgantown
- (b) “Employee” shall mean any individual who is employed at or physically reports to any location within the City and is paid by an employer, on a full-time or part-time basis, in exchange for salary, wages or other compensation.
- (c) “Employed” shall include an employee working for an employer so as to be subject to any federal or state employment or wage withholding requirement 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.
- (d) “Employer” shall mean any person, partnership, limited partnership, limited liability company, association (unincorporated or otherwise), corporation, institution, trust, governmental body or unit or agency, or any other entity (whether its principal activity is for-profit or not-for-profit) situated, doing business, or conducting its principal activity in the city and who employs an employee, as defined herein.
- (e) “Fee” shall mean the city service fee imposed by this article.
- (f) “Municipal Service” or “Municipal Services” shall mean the maintenance and improvement of Public Rights-of-Way and Police protection services.

(g) "Self-employed individual" shall mean an individual who maintains an office or place of business for conducting any livelihood, job, trade, profession, occupation, business or enterprise of any kind within the City boundaries.

SECTION 745.3. SERVICE FEE

Each Employee and Self-Employed Individual shall pay a fee for Municipal Services in the total amount of \$3.00 for each calendar week the individual is Employed in the City. This fee is in addition to any licenses, taxes, or fees required by other provisions of this Code.

SECTION 745.4. COLLECTION OF SERVICE FEE

(a) Every Employer shall deduct and withhold from any compensation paid to an Employee an amount equal to the fee imposed herein upon the Employee; provided, that the Employer shall not deduct or withhold the fee from the compensation of any Employee who executes and delivers a proper form prescribed by the City evidencing prior payment of the fee either directly or by collection through another Employer in the City.

(b) Each Employer shall maintain adequate records concerning the fees deducted and withheld and the Employees exempt from withholding.

(c) Any Employer who fails to deduct the fee as required by this section, or who fails to pay the trust funds to the City in accord with this Article and any related regulations shall be liable for such fee, along with any penalties or interest accrued thereon, as though the fee had originally been assessed against the Employer, subject to the following provisions:

(1) this Section shall not be applied to make the State of West Virginia liable for the debts of its employees, nor shall it preclude the State of West Virginia from voluntarily withholding or paying the service fee;

(2) this Section shall not permit the City to collect a total amount, as to any Employee, greater than the amount of the service fee owed and any penalties or interest accrued.

(d) Every Self-employed individual who is not Employed by an Employer and who has not had the fee deducted or withheld by an Employer shall file a form prescribed by the City and pay to the City all amounts due pursuant to this Article.

(e) The failure of any Employer to deduct the fee shall not relieve an Employee from the duty to pay the fee. The obligation to pay the service fee shall be a personal obligation of each individual subject to the service fee, and the City may take any action necessary, including the institution of legal proceedings, to collect the fee; provided that the City shall not collect a total amount, as to any Employee, greater than the amount of the service fee owed and any penalties or interest accrued.

(f) Fees not received by the City as of the applicable due date shall be considered delinquent. The city collector shall assess each delinquent account a penalty of five percent of the balance thereof. If the delinquency exceeds a month, an additional penalty of two percent 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 Finance Director may waive or abate the penalty established by this subsection for reasonable cause.

SECTION 745.5. REGULATIONS AND ADMINISTRATION

(a) The Finance Director shall prescribe regulations providing for the collection of amounts due pursuant to this Article, including the due date(s) for remittance of fees; guidelines for collection and payment of fees by Employers, Employees, and Self-employed individuals; requirements for withholding, collection, and remittance of fees by Employers; requirements for submission of additional information necessary or helpful in identifying all service fees owed, including employees' dates of employment and personal identification information. The rules, regulations, and procedures established shall be reduced to writing and shall take effect upon being filed in the office of the City Clerk.

(b) The administration of this article is vested in and shall be exercised by the Finance Director, who shall prescribe forms and reasonable rules of procedure in conformity with this Article for the making of returns, and for ascertaining, assessment and collection of fees imposed hereunder.

(c) In order to determine the correctness or adequacy of any remittance or information submitted to the City pursuant to this article:

(1) The 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.

(2) The 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.

(3) The Finance Director may enforce the provisions of this article by instituting a civil action in any court of competent jurisdiction pursuant to *W. Va. Code* § 8-13-15.

SECTION 745.6. ADMINISTRATIVE REVIEW AND RIGHT OF APPEAL

(a) Any person who has paid the fee imposed by this Article shall, in order to challenge the validity of the fee, file a claim for refund no later than 30 days after the fee is paid to the City by written notice of such claim on a form prescribed by the 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 Finance Director shall review the refund claim and provide for any necessary hearing, render a decision on the claim and promptly either notify the protesting party of such decision in writing or direct that a refund be issued, all within a reasonable time. Any written decision shall be issued by certified mail, return receipt requested.

(b) If aggrieved by the decision of the Finance Director, the protesting party may appeal the decision of the Finance Director to the Circuit Court of Monongalia County within 30 days after service of the decision.

(c) The administrative 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 30 days after service of the decision, the 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.

SECTION 745.7. DEDICATION OF REVENUE

All revenues generated by the city service fee imposed by this Article are hereby dedicated to and shall be exclusively utilized for the maintenance and improvement of Public Rights-of-Way and Police protection services.

SECTION 745.8. SEVERABILITY

If any portion of this Article is determined by a court of competent jurisdiction to be invalid or unconstitutional, such determination shall not affect the validity, constitutionality, legality, or application of any other portion of this Article.

SECTION 745.99. PENALTY

(a) It shall be unlawful for any person to refuse to pay, collect or remit the service fee herein provided to be paid, collected and remitted or to refuse to make any filings required by this article, 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 fee.

(b) 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).