

AN ORDINANCE ADOPTING ARTICLE 780, CITY SERVICE USER FEE,
OF CHAPTER THREE, TAXATION AND SERVICE CHARGES
OF PART SEVEN, BUSINESS AND TAXATION CODE OF THE CODIFIED
ORDINANCES OF THE CITY OF PARKERSBURG

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG That Article 780, City Service User Fee of Chapter Three of Part Seven, Business and Taxation Code of The Codified Ordinances of the City of Parkersburg be adopted as follows:

ARTICLE 780
CITY SERVICE USER FEE.

780.01 STATEMENT OF POLICY AND FINDINGS.

Council finds that the City of Parkersburg provides to all person in its borders certain services, whether they be residents employed within the City, or persons living outside the City and employed within the corporate boundaries of the City or persons visiting within the City. Such services include police and fire protection and traffic and street maintenance and other valuable services associated with the police and fire departments and public works department. Such services are within the authority and are the responsibility of the municipal government as provided under the general laws of the State of West Virginia and, since such services are essential to the creation and maintenance of those jobs which provide livelihood to all person 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. Additionally, the Council finds that an individual who is a resident and employed within the City has a greater interest and direct benefit from such municipal services. West Virginia Code Section 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 specified in the ordinance.

Council further finds that all of those who actually use, enjoy and benefit from these services should bear an equitable share of the cost thereof. Council acknowledges that the Supreme Court of Appeals of West Virginia has recognized that no system of assessing the cost 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 a reasonable and prudent means and legislation.

Council further acknowledges that the Legislature of the State of West Virginia has conferred upon municipalities that plenary power to enact reasonable administrative provisions to ensure the efficient, orderly and equitable, implementation and collection of the service fees from all possible users.

Council further finds that it has determined that it is in the best interests of the citizens of the City of Parkersburg and the users of all City services to enact this Article to impose a city service user fee.

Council further finds that there are thousands of person who use and benefit from municipal services who are not owners of property or residents of the City of Parkersburg, but who are employed within the City.

Council further finds that employers located within the City of Parkersburg possess important employment information necessary to properly enforce certain aspects and provisions of the Article. Therefore, reasonable regulations concerning obtaining certain information from such employers shall be a necessary and important part of the administration of the City service user fee.

780.02 DEFINITIONS.

(a) "User" mean any person who is self-employed or 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 780.03 of this Article.

(b) "Municipal service or municipal services" shall mean any valuable service provided by the City of Parkersburg, its departments, boards, commissions and agents, which shall include, but not limited to, fire protection, flood protection, police protection, 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 780.03 of this Article.

(d) "Fee" shall mean the city service user fee to be imposed by the provisions of this Article.

(e) "Director" shall mean the Director of Finance as designated and defined in section 4.3, Chapter 3, Article IV of the Official Charter of the City of Parkersburg as amended.

(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 Parkersburg.

(h) "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.

(i) "Employee" shall mean any individual who is employed at or physically reports to one or more locations within the City and is on the payroll of an employer, on a full-time or part-time basis, in exchange for salary, wages or other compensation.

(j) "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.

(k) "Self Employed Individual" shall mean an individual who regularly maintains an office or place of business for conducting any livelihood, job, trade, profession, occupation, business or enterprise of any kind within the City's geographical boundaries over the course of four or more calendar weeks, which need not be consecutive, in any given calendar year.

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

Council finds that being employed or holding employment with an employer with a place of business located within the City of Parkersburg 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 user fee from the person engaging in the activity stated.

780.04 IMPOSITION OF CITY SERVICE USER FEE.

(a) Effective 12:00 a.m., February 28, 2011, and thereafter, there is hereby imposed a city service user 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 780.02 (a) of this Article. Such person or persons shall be required to pay a city service user fee of TWO DOLLARS AND FIFTY CENTS (\$2.50) PER CALENDAR WEEK.

780.05 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 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 Parkersburg 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 full-time/part-time employees; hire dates and termination dates for new employees or those who have left employment; names, the last four digits of social security numbers and addresses; 4) regulations requiring employers to collect from their employees and to remit to the Department 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 Director of Finance may, upon his discretion, allow employers to submit information on an annual basis, however, payment of fees shall be made on or before the designated due date; and 6) the method of reporting can be done by any means found to be acceptable by the Director of Finance.

(b) For the purpose of ascertaining the correctness of any information submitted to the Director as required by subsection (1) of this section, the Director, or his designee, shall have the power to examine or cause to be examined, any book, 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 of Finance shall further have the power to issue subpoenas and subpoenas duces tecum in the name of the City of Parkersburg 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 Director of Finance 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.

780.06 DELINQUENT ACCOUNTS.

Each installment of the city service user 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 bill has been sent. Thereafter, a penalty of two percent (2%) shall be added to the total outstanding balance at the end of each quarter. The Director of Finance may waive or abate the penalty hereunder for reasonable cause.

780.07 ENFORCEMENT.

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

780.08 PROTEST; ADMINISTRATIVE DECISION; APPEAL

(a) Anyone one who has paid the fee imposed by this article shall file a claim for a refund no later than thirty (30) days after the fee is paid over to the City by written notice of such claim with the Director of Finance 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 Director of Finance shall review the refund claim and provide for any necessary hearing, render a decision on the claim and forthwith either notify the protesting party 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 Director of Finance, the protesting party may appeal the decision of the Director of Finance to the Circuit Court of Wood County within thirty (30) days after service of the Director of Finance'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 Director of Finance 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 Wood County Circuit Court and docketed as other cases, with the aggrieved party as plaintiff and the Director of Finance as defendant.

(2). The filing of the appeal shall not stay the collection of the fee unless 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 Wood 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 Wood County Circuit Court; provided, that the judge of the Wood 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 Wood County Circuit Court's orders or that the ends of justice will be served thereby.

(3). The Wood County Circuit Court shall hear the appeal and determine anew all questions submitted to it on appeal from the decision of the Director of Finance. In such appeal a certified copy of the Director of Finance's fee assessment shall be admissible and shall constitute prima facie evidence of the fee due under the provisions of this article.

(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 with thirty (30) days after service of the Director of Finance'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.

780.09 EMPLOYER RESPONSIBILITY; WITHHOLDING; REPORTING; PAYMENT.

It shall be the responsibility of all persons or firms employing persons subject to the city service user fee pursuant to section 780.04(a) of this Article to make payments 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.

(a) Every employer shall deduct and withhold from any compensation or income paid to an employee in its employ an amount equal to the fee imposed herein upon said employee; provided, that an employer shall not deduct or withhold the fees as to any employee who executes and delivers a proper form prescribed by the Director of Finance evidencing prior payment of the fee either directly or by collection through another employer in the City; provided further, that the employer shall maintain adequate records concerning any such employees. Every employer is deemed to be a trustee for the city in collecting and holding the fee required to be withheld and the funds

so collected by such withholding are deemed to be trust funds. The failure of any employer to deduct the fee shall not relieve the employee from the duty to pay the fee. Any employer who fails to deduct the fee as required by this section, or who fails to pay the trust funds to the Director of Finance pursuant to this section and the regulations promulgated pursuant thereto, shall be liable for such fee in full, along with an penalties or interest accrued thereon, as though the fee had originally been assessed against the employer notwithstanding any provisions herein to the contrary.

(b) 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 Director of Finance and pay to the Director of Finance all such fees that are due and owing according to and in the manner prescribed by the regulations promulgated pursuant hereto.

780.10 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.

780.11 DEDICATION TO REVENUES.

All revenues generated by the city service user fee imposed herein are hereby dedicated to and shall be utilized for fire and police protection, flood protection, traffic and street maintenance and public works projects related thereto, and any costs attendant or related to the imposition and processing of this fee.

In addition, any and all such revenues paid to the City during the remainder of the fiscal year 2010-2011 that being to and including June 30, 2011 shall be paid into and held in the Capital Reserve Fund pending further action by City Council and in accordance with this section.

780.12 FEE IMPOSED IN ADDITION TO MUNICIPAL SERVICE USER FEE IN ARTICLE 781, 783, and 789.

The fee imposed herein shall be in addition to and independent and exclusive of the Municipal Service User Fee for police, fire and flood protection service imposed under Article 781, Article 783 and Article 789, Chapter Three of Part Seven of these Ordinances.