

BILL NO. 7002 Committee Substitute

A BILL to amend and reenact Chapter 6 of the Code of the City of Charleston by attaching thereto a new Article, designated as Article X, entitled “City Service Fee.”

ARTICLE X. CITY SERVICE FEE

§ 6-203 FINDINGS.

- (a) The City Council of the City of Charleston finds that the City provides to all individuals within its borders certain services, whether they are residents employed within the City, or individuals living outside the City and employed within the corporate boundaries of the City.
- (b) The City Council of the City of Charleston finds that such services include police protection and traffic and street maintenance and other valuable services associated with the police department and public works department.
- (c) The City Council of the City of Charleston finds that such services are within the authority and are the responsibility of the municipal government of the City of Charleston as provided under the general laws of the State of West Virginia.
- (d) The City Council of the City of Charleston finds that since such services are essential to the creation and maintenance of those jobs which provide livelihood to all individuals 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.
- (e) The City Council of the City of Charleston 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 Charleston 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 Charleston 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 Charleston 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 Charleston finds that it is in the best interests of the citizens of the City of Charleston and the users of City services to enact this Article to impose a City Service Fee.
- (j) The City Council of the City of Charleston finds that there are tens of thousands of individuals who benefit from municipal services who are not owners of property or residents of the City of Charleston, but who are employed within the City.
- (k) The City Council of the City of Charleston 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.

§ 6-204 DEFINITIONS.

For the purpose of this Article:

- (a) “City” shall mean the City of Charleston.
- (b) “City Collector” shall mean the City Collector of the City of Charleston and his or her designee.
- (c) “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.
- (d) “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.
- (e) “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 employees an employee, as defined herein.

- (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 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 (4) or more calendar weeks, which need not be consecutive, in any given calendar year.

§ 6-205 DECLARATION AS TO CONDUCT EVIDENCING THE USE OF A MUNICIPAL SERVICE.

The City Council of the City of Charleston declares that being 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.

§ 6-206 IMPOSITION OF FEE; RATE

There is hereby imposed a city service fee upon each employee and self-employed individual at the rate of one dollar (\$1.00) per calendar week of employment within the City. No individual shall pay the fee more than once for the same week of employment regardless of multiple employment. The fee imposed by the Article is in addition to all other fees imposed by the City.

§ 6-207 EFFECTIVE DATE

The imposition of the city service fee shall take effect beginning January 1, 2004.

§ 6-208 ADMINISTRATIVE REGULATIONS.

The City Collector 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,
 - (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 Collector 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.

§ 6-209 INVESTIGATIONS; POWER TO AUDIT.

For the purpose of ascertaining the correctness or adequacy of any remittance or information submitted to the City Collector as required by Section 208 of this Article:

- (a) The City Collector 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 Collector 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 Collector 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.

§ 6-210 DELINQUENT ACCOUNTS; PENALTIES.

- (a) The fee imposed by this article, if not paid when due, shall bear interest at the rate of eight percent per annum from the due date of the remittance until paid.

Payment of fees not received upon the due date shall be considered delinquent. The City Collector 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 Collector may waive or abate the penalty for reasonable cause.

§ 6- 211 ENFORCEMENT.

The City Collector is charged with administration and enforcement of this Article and may, among other remedies, 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.

§ 6-212 PROTEST; ADMINISTRATIVE DECISION; APPEAL

- (a) Anyone 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 Collector 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 Collector 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 City Collector, the protesting party may appeal the decision of the City Collector to the Circuit Court of Kanawha County within thirty (30) days after service of the City Collector'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 Collector 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 Kanawha County Circuit Court and docketed as other cases, with the aggrieved party as plaintiff and the City Collector 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 Kanawha 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 Kanawha County Circuit Court; provided, that the Judge of the Kanawha 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 Kanawha County Circuit Court's orders or that the ends of justice will be served thereby.

- (3) The Kanawha County Circuit Court shall hear the appeal and determine anew all questions submitted to it on appeal from the decision of the City Collector. In such appeal a certified copy of the City Collector'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 within thirty (30) days after service of the City Collector'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.

§ 6-213 WITHHOLDING; REPORTING; PAYMENT

- (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 fee as to any employee who executes and delivers a proper form prescribed by the City Collector 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 City Collector pursuant to this section and the regulations promulgated pursuant thereto, shall be liable for such fee in full, along with any 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 the City Collector and pay to the City Collector all such fees that are due and owing according to and in the manner prescribed by the regulations promulgated pursuant hereto.

§ 6 - 214 DEDICATION OF REVENUES.

All revenues generated by the city service fee imposed herein are hereby dedicated to and shall be exclusively utilized for police protection and street maintenance and public

works projects related thereto, and any costs related to the imposition and processing of this fee.

§ 6 - 215 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.