

Ordinance 2024-02 Ordinance of the City of Weston Replacing All Prior Ordinances Related to the Municipal Service Fee and Creating a First Due Fire Fee

Findings by Common Council

Whereas, W.V. Code §8-13-13(a), as amended, authorizes municipalities in the state to impose fees upon the users of special municipal services;

Whereas, the City of Weston provides the services of police protection, fire protection, and street maintenance;

Whereas, the City of Weston provides police protection and street maintenance within the city limits of Weston;

Whereas, the City of Weston provides fire protection within the city limits of Weston and outside the city limits of Weston in an area known as the Weston Fire Department First Due Area ("First Due Area");

Whereas, the City Council has determined that person(s), property, and entities of any kind within the Weston city limits use the services of police protection and street maintenance, and, therefore, shall be called "Users of Police and Street Services";

Whereas, the City of Weston has determined that person(s), property, and entities of any kind within Weston city limits and person(s), property, and entities of any kind within the First Due Area use the services of the Weston Fire Department and, therefore, shall be called "Users of Fire Services";

Whereas, the City Council has determined that the cost of providing these fire protection services to Users has increased since 2009;

Whereas, the City Council has determined that the cost of providing police protection and street maintenance to Users of Police Services and Street Services has increased since 2009;

Whereas, the City Council has determined that Users of Fire Services in the First Due Area have not paid any particular fees to the city of Weston related to the provision of services by the Weston Fire Department;

Whereas, the City Council has determined that the current municipal fee system administered within the city limits of Weston does not provide enough money to cover the costs of providing fire protection services to Users of Fire Services within city limits and Users of Fire Services in the First Due Area;

Whereas, the City Council has determined that the Users of Fire Services must all pay for the costs of such usage;

Whereas, the City Council recognizes that the Lewis County Commission imposes a \$20 Fire Fee on residential properties located in the First Due Area and a \$50 Fire Fee on commercial properties located in the First Due Area ("County Fire Fee");

Whereas, the City Council recognizes that some portion of this County Fire Fee is given to the Weston Fire Department;

Whereas, the City Council recognizes that said portion of money is not enough to cover the costs of Weston Fire Department;

Whereas, the City Council recognizes that the County Fire Fee is a fee separate and apart from municipal service fees permitted under West Virginia Code §8-13-13;

Whereas, the City Council has determined that the Users of Fire Services within the city limits of Weston shall no longer be the overwhelming cost-bearers for fire protection services provided to Users of Fire Services in the First Due Area;

Whereas, the City Council has determined that areas outside the city limits of Weston do not receive police protection or street maintenance from the City of Weston;

Whereas, the City Council has determined that person(s), property, and entities of any kind in these areas are considered "Non-Users of Police and Street Services" for purposes of this ordinance;

Whereas, the City Council has determined that the costs of police protection and street maintenance shall not be charged to Non-Users of Police and Street Services;

Whereas, the City Council finds it is necessary and a priority to fund the Weston Fire Department to cover or, at least, defray, costs incurred by the Weston Fire Department;

Whereas the City Council finds it necessary to impose a fee upon Users of Fire Services, whether the User is inside the city limits or not, in order that these services may continue for the benefit of the Users of the services;

Whereas, the City Council is aware that a Municipal Service Fee as provided in this ordinance and colloquially called a "Fire Fee" and "First Due Fire Fee" is not a tax as the amount paid by a User is not, and shall not, be based on any particular value of property;

Whereas, the City Council now repeals all prior ordinances and rules concerning the charge and collection of Municipal Service Fees related to fees associated with WV Code §8-13-13;

Whereas, the City Council enacts this ordinance to replace all prior ordinances and rules concerning the charge and collection of Municipal Service Fees related to fees associated with WV Code §8-13-13;

Whereas, the repeal of all prior municipal fee ordinances/rules shall not eliminate the Weston Fire Department's ability to recover costs in other legal ways;

That now, the City Council, through this ordinance, adopts the following rules, regulations, and fees:

DEFINITIONS

For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMERCIAL : a building, or an area of a building, intended or designed or used for non-residential purposes

FIRST DUE AREA: the area outside the City limits of Weston as designated by the West Virginia State Fire Commission and/or West Virginia State Fire Marshal to which the Weston Fire Department is obligated to respond.

FIRE FEE: the fee for fire protection services that is charged to a particular User

FIRST DUE FIRE FEE/FIRST DUE FEE: the fee charged to the Users outside the city limits of Weston (i.e. First Due Area) for services provided by the Weston Fire Department

FIRE PROTECTION SERVICES/SERVICES: Services rendered by the Weston Fire Department including but not limited to fire protection, fire prevention, emergency responses, and physical/mental health calls, and all other municipal services as authorized by W. Va. Code §8-13-13 that may someday be rendered by the Weston Fire Department; these services may be rendered inside the city limits of Weston or in the Weston Fire Department's First Due Area or other areas as may arise in the future

NON-RESIDENTIAL PURPOSE: uses of buildings, or uses of areas of buildings, intended or designed for purposes that are not Residential Purposes

OWNER/OWNERS: the owner(s) of record of any parcel of real estate within the City of Weston or within the Weston Fire Department's First Due Area; ownership shall be confirmed, if necessary, by a review of records maintained in the Lewis County Clerk's Office; by transfer via unrecorded deed; by transfer via owner-financed sale evidenced by a written agreement (i.e. "land contract") provided that the parties alert the Weston City Finance Manager as to which party shall be responsible for the payment of the relevant fire fees; if the Owner of a structure is different than the Owner of a parcel on which the structure sits, then the Owner of the Structure shall be deemed the Owner

POLICE SERVICES: services rendered by the Weston Police Department including, but not limited to, response to emergencies, response to complaints, efforts at crime prevention, activities that are customarily associated with police work, physical/mental health calls, and all other police-related services that someday may be rendered by the Weston Police Department

RESIDENTIAL PURPOSE: uses of buildings, uses of area of buildings, intended or designed for purposes of living, dwelling, sleeping, and/or other customary actions associated with an area in which a person(s) lives, calls "home," or is otherwise domiciled

RESIDENTIAL STRUCTURES

NON-OWNER OCCUPIED RESIDENTIAL UNIT: a building, or area of a building, used, or intended to be used, for Residential Purposes, and is actually rented, intended to be rented, or designed to be rented for Residential Purposes; this definition is intended to encompass apartment buildings, rental houses, duplexes, triplexes, and other forms of buildings or areas of buildings that are rented for Residential Purposes; this definition does not include hotels or motels

OWNER OCCUPIED RESIDENTIAL UNIT: a building, or area of a building, that is used as the primary residence of the owner of the building; these include, but are not necessarily limited to, single family homes; detached garages, outbuildings, barns, or other similar buildings located on the same parcel of land as an OWNER OCCUPIED RESIDENTIAL UNIT shall all be considered together as one OWNER OCCUPIED RESIDENTIAL UNIT; a building that serves NON-RESIDENTIAL PURPOSES and is located on the same parcel of land as an OWNER OCCUPIED RESIDENTIAL UNIT shall not be encompassed by this definition and shall be subject to fees associated with NON-RESIDENTIAL UNIT fees

NON-RESIDENTIAL STRUCTURES

NON-RESIDENTIAL UNIT: any building, or area of a building, that is used, intended to be used, or designed to be used for NON-RESIDENTIAL PURPOSES; buildings designated as "commercial" by the Lewis County Assessor shall also be included in the definition of NON-RESIDENTIAL UNIT; EXCEPT that multiple family residential structures that the Lewis County Assessor designates as commercial buildings shall not be commercial buildings for purposes of this ordinance; buildings that house NON-RESIDENTIAL PURPOSES and RESIDENTIAL PURPOSES shall be charged a fee for each particular unit based on that unit's use

UNIT: each area of a structure that, standing alone, serves either RESIDENTIAL PURPOSES or NON-RESIDENTIAL PURPOSES as the case may be

USER OF FIRE SERVICES. any person(s), property, and entities of any kind located within the city limits of Weston and/or any person(s), property, and entities of any kind located within the First Due Area

VACANT LOT: a parcel of land inside the Weston city limits on which no building or structure exists; a parcel that is used as a parking area for a bona fide business or bona fide residential area shall not be considered a VACANT LOT;

the term VACANT LOT shall not mean any parcel of land that A) has no structure on it, and B) is adjacent to (including simply the touching of corners of land) a parcel with a structure on it, and C) is owned by the owner of the parcel with the structure on it;

the term VACANT LOT shall not mean any A) vacant lots that are B) adjacent to the above vacant lot identified above and (C) owned by the same owner as the parcel with the structure on it;

The purpose of this definition is to make a User of Police and Street Services pay a fee for the parcel of land with a structure on it ("charged parcel") and not pay a fee for any vacant lot that is adjacent to the charged parcel so long as Owner owns the Vacant and Charged Parcel;

The purpose of this definition is to not make a User pay for a string of vacant lots so long as A) that string of vacant lots are all owned by the same Owner and B) the vacant lots are all adjacent to each other and can be connected back to the Charged Parcel

WESTON FIRE DEPARTMENT: the paid personnel, volunteer personnel, and any equipment used by such paid and/or volunteer personnel that comprises the Weston Fire Department as identified with the West Virginia State Fire Commission and/or Weston State Fire Marshal

ZONE/ZONES: the term Zone or Zones shall refer to the areas of the city zoned through the 2019 City of Weston Zoning Code and any amendments

§1 IMPOSITION OF MUNICIPAL SERVICE FEE INSIDE CITY LIMITS

(A) There is hereby imposed upon all users of municipal services provided by the city, a municipal service fee for each lot or parcel of land containing any building or structure owned by each such user.

(B) The municipal service fee shall be imposed at an annual rate as follows:

(1) Owners of all OWNER OCCUPIED RESIDENTIAL UNIT shall pay an annual schedule of municipal service fees as follows:

Fire Protection Fee: \$105.00 per unit

Police Protection Fee: \$25.00 per unit

Street Maintenance Fee: \$25.00 per unit

Bringing the aggregate Municipal Service Fee for owners of OWNER OCCUPIED RESIDENTIAL UNIT to \$155.00 per year, per unit.

In the event a parcel of land has an OWNER OCCUPIED RESIDENTIAL UNIT on it and a building(s) that is customarily associated with a residential structure such as a detached garage, outbuilding, barn, or other similar structure, and those structures do not serve a NON-RESIDENTIAL PURPOSE, then the owner of the OWNER OCCUPIED RESIDENTIAL UNIT shall only be charged \$155.

Parcels with OWNER OCCUPIED RESIDENTIAL UNITS and NON-RESIDENTIAL UNITS on the parcel shall be billed for each unit.

In the event a parcel has more than one OWNER OCCUPIED RESIDENTIAL UNIT on the parcel, each unit shall be charged a fee.

(2) Owners of all NON-OWNER OCCUPIED RESIDENTIAL UNIT shall pay an annual schedule of municipal service fees as follows:

Fire Protection Fee: \$157.50 per unit

Police Protection Fee: \$33.75 per unit

Street Maintenance Fee: \$33.75 per unit

Bringing the aggregate Municipal Service Fee for owners of NON OWNER OCCUPIED RESIDENTIAL UNIT to \$225.00 per year, per unit.

In the event a parcel of land has a NON-OWNER OCCUPIED RESIDENTIAL UNIT on it AND a building(s) that is customarily associated with a residential structure such as a detached garage, outbuilding, barn, or other similar structure, and those structures do not serve a NON-RESIDENTIAL PURPOSE, then the Owner of the NON OWNER OCCUPIED RESIDENTIAL BUILDING shall only be charged the \$225.00 per unit fee.

Parcels with NON-OWNER OCCUPIED RESIDENTIAL UNITS and NON-RESIDENTIAL UNITS on the parcel shall be billed for each unit as applicable.

In the event a parcel has more than one NON-OWNER OCCUPIED RESIDENTIAL UNIT on the parcel, each unit shall be charged.

(3) Owners of NON RESIDENTIAL UNITS shall pay an annual schedule of municipal service fees as follows:

Fire Protection Fee: \$250.00 per unit

Police Protection Fee: \$62.00 per unit

Street Maintenance Fee: \$62.00 per unit

Structures with NON-RESIDENTIAL UNIT(S) and OWNER OCCUPIED RESIDENTIAL UNIT(S) shall be charged separate unit at rates defined for each unit.

Structures with NON-RESIDENTIAL UNIT(S) and NON-OWNER OCCUPIED RESIDENTIAL UNIT(S) shall be charged for each separate unit at rates defined for each unit.

In the event a parcel has more than one NON-RESIDENTIAL UNIT on the parcel, each unit shall be charged a fee.

(4) Owners of VACANT LOTS shall pay an annual schedule of municipal service fees as follows:

Fire Protection Fee

\$0.00

Police Protection Fee

Vacant Lot in General Commercial, Mixed Use, or Neighborhood Commercial Zones: \$62.00

Vacant Lot in all other Zones: \$33.75

Street Maintenance Fee

Vacant Lot in General Commercial, Mixed Use, or Neighborhood Commercial Zones: \$62.00

Vacant Lot in all other Zones: \$33.75

(C) Pursuant to West Virginia Code §8-13-15, the City of Weston may bring a civil action or other legal actions against users who do not pay a municipal service fee.

(D) The Weston City Council shall perform an annual review all fees. The Weston City Council has authority to adjust fees on a yearly basis.

§2 IMPOSITION OF FIRE FEE IN FIRST DUE AREA

The Weston City Council finds the following:

The West Virginia State Fire Commission requires the Weston Fire Department to respond to calls outside the city limits of Weston. This area is known as the Weston Fire Department's First Due Area. As such, the Weston Fire Department, through its paid and volunteer personnel, is required to provide fire protection services to areas outside the city limits of Weston. The Weston Fire Department incurs various costs in providing these services.

The County Commission of Lewis County currently has Fire Fee of \$20/year per residential user and \$50/year per commercial user. This County Fire Fee is a fee outside the scope of West Virginia Code §8-13-13. Some amount of the County Fire Fee is distributed to the Weston Fire Department. Said fee is not enough to cover the services provided by the Weston Fire Department to the First Due Area.

As such, the following shall apply:

(A) Fire protection service shall be continued, maintained, and improved by the City, for the benefit of the Users of Fire Services located in the First Due Area. The First Due Area shall be defined as the area outside the City limits of Weston designated by the West Virginia State Fire Commission and West Virginia State Fire Marshal to which the Weston Fire Department is obligated to respond. The owners of buildings, structures, and land in the First Due Area are determined to be users and beneficiaries of fire services as contemplated by West Virginia Code §8-13-13.

(B) The First Due Fee shall be imposed in the First Due Area at an annual rate as follows.

- (1) Owners of all OWNER OCCUPIED RESIDENTIAL UNITS shall pay an annual schedule of First Due Fees as follows:

Fire Protection Fee: \$157.50 per unit

In the event a parcel of land has an OWNER OCCUPIED RESIDENTIAL UNIT on it and a building(s) that is customarily associated with a residential structure such as a detached garage, outbuilding, barn, or other similar structure, and those structures do not serve a NON-RESIDENTIAL PURPOSE, then the owner of the OWNER OCCUPIED RESIDENTIAL UNIT shall only be charged \$157.50.

Parcels with OWNER OCCUPIED RESIDENTIAL UNITS and NON-RESIDENTIAL UNITS on the parcel shall be billed for each unit.

In the event a parcel has more than one OWNER OCCUPIED RESIDENTIAL UNIT on the parcel, each unit shall be charged a fee.

- (2) Owners of all NON OWNER OCCUPIED RESIDENTIAL UNITS shall pay an annual schedule of First Due Fees:

Fire Protection Fee: \$236.25 per unit

In the event a parcel of land has a NON-OWNER OCCUPIED RESIDENTIAL UNIT on it AND a building(s) that is customarily associated with a residential structure such as a detached garage, outbuilding, barn, or other similar structure, and those structures do

not serve a NON-RESIDENTIAL PURPOSE, then the Owner of the NON OWNER OCCUPIED RESIDENTIAL BUILDING shall only be charged the \$236.25 per unit fee.

Parcels with NON-OWNER OCCUPIED RESIDENTIAL UNITS and NON-RESIDENTIAL UNITS on the parcel shall be billed for each unit as applicable.

In the event a parcel has more than one NON-OWNER OCCUPIED RESIDENTIAL UNIT on the parcel, each unit shall be charged.

- (3) Owners of all NON RESIDENTIAL UNITS shall pay an annual schedule of First Due Fees:

Fire Protection Fee: \$0.15 per square foot of subject unit

Square footage shall be determined by using the Lewis County Assessor's information concerning the square footage of buildings. In the event such information is not available, the City of Weston shall cause the square footage of the UNIT to be measured and charged accordingly.

In the event a parcel has more than one NON RESIDENTIAL UNIT on the parcel, each UNIT shall be charged.

In the event a parcel has a NON RESIDENTIAL UNIT on the parcel and either an OWNER OCCUPIED RESIDENTIAL UNIT or a NON OWNER OCCUPIED RESIDENTIAL UNIT or both on the parcel, then each UNIT shall be charged for each UNIT.

(C) Pursuant to West Virginia Code §8-13-15, the City of Weston may bring a civil action or other legal action against users who do not pay a municipal service fee.

(D) The Weston City Council shall perform an annual review all fees. The Weston City Council has authority to adjust fees on a yearly basis.

§3 ADMINISTRATION BY THE CITY FINANCE MANAGER.

(A) The City Finance Manager shall administer this fee system. The Finance Manager shall set up an account for each such user and shall charge the applicable fee to each such user on an annual basis, with a schedule of payments outlined below. The City Council may change this billing cycle method through amending this ordinance.

(B) The Finance Manager is hereby authorized to promulgate such rules and regulations as are necessary and reasonable to carry out the provisions of this system. Such rules and regulations will be subject to review and amendment at any time by the

Common Council. The Common Council, by resolution, may amend the rules and regulations promulgated by the City Finance Manager.

§4 SCHEDULE OF PAYMENTS.

- (A) The fees imposed by this ordinance shall be payable based on the following schedule:

Fees for In-City Users shall be paid annually starting on July 1, 2024

Fees for First Due Area Users shall pay their first fee on January 1, 2025, and then pay annually starting July 1, 2025

(B) Payments of the fees identified in this ordinance shall be due within 30 days of the due date on a user's bill. Fees not paid within 30 days of their issuance shall be delinquent. There shall be added to each delinquent account a quarterly penalty not to exceed a combined rate of 6% per annum. Unpaid penalties will also be penalized at a quarterly rate not to exceed 6% per annum starting the quarter following the quarter in which they were initially assessed.

(C) Pursuant to West Virginia Code §8-13-15, the City of Weston may bring a civil action or other legal actions against users who do not pay a municipal service fee.

§5 EXEMPTIONS.

(A) There shall be excepted from the operation of this ordinance those properties used exclusively for divine worship

(B) There shall also be exempted from the operation of this ordinance those properties occupied by benevolent associations and used exclusively for meetings of such associations; provided, that properties occupied by benevolent associations which are available for use or rental by the public to hold parties or other events not attended exclusively by members of the association and their guests, or are regularly used for the dispensing of food and/or alcoholic or nonalcoholic beverages to the membership of such associations or others shall not be exempted from the operation of this ordinance and the payment of any fire fee hereby established.

(C) The Weston City Council may, from time to time, create new exemption categories by amending this Ordinance.

§6 ENFORCEMENT.

If an owner of a building within the city limits of Weston does not pay any of the applicable fees and penalties within sixty (60) days of the date of the bill, the Finance Manager shall alert the owner, via certified mail, return receipt requested, and the owner shall then have ninety (90) days to pay the bill. The ninety (90) days shall begin on the date the notice was mailed. In the event the owner does not pay the bill within those ninety (90) days, the City of Weston may then place a lien on the owner's property. An aggrieved owner may appeal the placement of a lien to the Circuit Court of Lewis County.

In situations where accounts are delinquent, the City may institute any legal method other than lien placement for the collection of in-city and first due area fees, including but not limited to the use of collection agencies and any appropriate civil action, including distraint. The City may also utilize any and all available legal action, including actions in any court of competent jurisdiction for the collection of the fire fee from the user at any time such user's account is delinquent.

§7 MUNICIPAL SERVICE FEE APPEAL BOARD.

(A) There shall be established a Municipal Service Fee Appeals Board, consisting of three members whose terms shall be two years. One member shall be a Council member selected by the Mayor and approved by majority vote of Council, one shall be a representative of the Lewis County Chamber of Commerce approved by majority vote of Council, and the third shall be a resident of the city of Weston approved by majority vote of Council. During their 2-year terms, members shall serve at the will and pleasure of Council. Any vacancy for whatever cause shall be filled by the same procedure in which the vacant position was previously filled.

(B) The Board shall have the power to correct or amend the amount of the fees charged whenever there has been an error of fact or law in the calculation or billing based upon evidence presented at a protest hearing as provided in this ordinance. The determination and order of the Board shall be by a majority vote of the members present and voting.

§8 PROTEST AND APPEAL.

(A) Any user who feels aggrieved by any charge to his or her municipal service fee account may protest the same by filing written notice of such protest with the City Finance Manager setting forth his or her objections thereto and the reasons therefor, on or before the due date of his or her next installment payment. The City Finance Manager shall review such user's account, and in conjunction with the City Manager, shall 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 still aggrieved, he or she may, within 15 days of the date of the Finance Manager's decision, petition the Municipal Service Fee Appeal Board, who shall set a date and a time for hearing on the protest, which hearing shall be held within 30 days from the filing of such appeal.

(B) The Municipal Service Fee Appeal Board shall hear evidence relevant to the protest. Within 5 days of the hearing the Board shall render its decision on the issues raised at said hearing. The Board shall give notice of its decision in writing to the user and to the City Finance Manager. The user may, within 15 days from the date of the decision of the Appeals Board, file a petition, duly verified, with a court of competent jurisdiction, requesting review of the Board's decision. If no such petition be filed within 15 days, the decision of the Appeals Board shall become final and conclusive. Nothing herein shall be construed to prohibit the accrual during the course of this appeal process of any penalty upon the balance of any account ultimately found to be properly charged.

(C) In the event the account remains delinquent within fifteen (15) days after the date of decision of the City Finance Manager, or within fifteen (15) days of the date of a decision of the Fire Fee Appeals Board, then the City of Weston is permitted to pursue appropriate civil actions against the Owner, including, but not limited to, distraint of the property.

§9 SEVERABILITY

If any court of competent jurisdiction finds that any word, clause, sentence, or other portion of this ordinance is constitutionally defective then the remaining portions of the ordinance shall remain in full force and effect.

§10 EFFECTIVE DATE

This ordinance shall become effective the day after all legal procedures for protesting this ordinance expire. The billing system in this ordinance will become effective, and users expected to pay the fees in this ordinance, starting July 1, 2024.

First Reading March 4, 2024

Second Reading _____

Kim Harrison-Edwards, Mayor

Judy Piercy, City Clerk

Class II Advertisement First Date Published _____

Class II Advertisement Second Date Published _____

Date Second Publication Expired _____

Ordinance 2024-02

Did 30% of Qualified Voters of Weston File Petition to Protest This Ordinance?

Date of Submission of Petition to City Clerk _____

If Petition Submitted Within the Appropriate 45 Days of Expiration of Second Publication (see WV Code §8-13-3(f)), did majority of qualified voters of the city vote to ratify the ordinance? _____