

**ORDINANCE of the CITY OF ROMNEY
To Establish an
ANNUAL SERVICE FEE**

Article I

An ordinance to establish an Annual Service Fee for the purpose of maintaining city streets and thoroughfares, lighting and public safety.

WHEREAS, The City of Romney provides certain services to all individuals within its borders irrespective of residency, and,

WHEREAS, the City provides maintenance of the city streets and thoroughfares, lighting, police protection and other valuable services, and,

WHEREAS, such services are within the authority and responsibility of the municipal government as set forth in general law and statutes of the State of West Virginia, and,

WHEREAS, such services are essential to the creation and maintenance of jobs within the city, and it is therefore reasonable to derive a portion of the costs of providing and maintaining such services from those who use, enjoy and benefit from such services, and,

WHEREAS, the West Virginia Code Annotated §8-13-13 grants unto the City the authority to establish rules and regulations, and impose by ordinance upon the users of city services such fees, reasonable rates and charges as may be required to maintain, install, or improve city services, and

WHEREAS, the City is required by the State of West Virginia to establish such reasonable administrative procedures to ensure efficient, orderly and fair implementation of collection of the service fee from all users, and

WHEREAS, the City finds that there are individuals who use, enjoy and benefit from the city services and thereby the City seeks to equitably apportion the burden of costs for said services and benefits among all the users,

NOW THEREFORE THE CITY ADOPTS THE ANNUAL CITY SERVICE FEE.

Section 1. Purpose

The purposes of this ordinance is to establish an annual service fee to assess individuals doing business and/or working within the municipal limits of the City of Romney. The annual service fee shall be assessed on business owners, employers and employees that do not currently pay a city municipal service charge or "user fee." The fees collected from the annual service fee shall be used for street maintenance and improvements and public safety as City Council may

require. In all circumstances, the annual service fee revenues shall be applied to services provided by the City to its residents and to those who work within the municipal limits.

Section 2 Definitions

For the purposes of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this section.

Administration. The City Administrator and the Treasurer/Clerk acting solely or jointly is the Administration for purposes of administrating and enforcing the provisions of this ordinance.

City. The City of Romney.

Business Owner. The term business owner shall mean anyone who conducts business, (furnishes services, labor or materials) within the limits of the City of Romney. The requirement of a City of Romney business license is not the sole factor in determining who is assessed the Annual Service Fee. There may be instances where the fee will be assessed absent a City of Romney Business License. A business or government entity paying a user fee is not exempt from the annual service fee on its employees who do not individually pay a City user fee.

City Resident. One who lives at a residence within the City of Romney and pays a user fee.

Employer. 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 and has employees as defined herein. One who engages another to furnish services and/or labor for the purpose of furnishing services, labor and/or materials.

Employee. One 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. Part-time employees of less than twenty hours per week may seek an exemption upon written application providing verification of such time to the City Administrator.

Employed. One who works for an Employer so as to be subject to any federal or state 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 so long as the employee remains on the current payroll of an employer during a calendar week and derives 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 during a calendar week so long as such individual has not permanently discontinued employment within the City.

Fee. The annual service fee imposed by the provisions of this ordinance on non-payers of the City user fee.

Non-Resident. One who does not reside within the municipal limits of the City of Romney.

Self Employed Individual. An individual who regularly maintains an office or place of business and conducts 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.

User Fee. The municipal service charge levied on residents of the City collected through the City's utility billing.

Section 3. Determination of User of Municipal Services Anyone who is an employer, employee and/or self-employed within the City limits, does not reside within the municipal City limits, does not pay the City user fee and utilizes one or more municipal services is subject to assessment and collection of the annual service fee.

Section 4. Imposition of Fee and Rate

There is hereby imposed an annual city service fee upon each employer, 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 employments.

Section 5. Exclusions and Exemptions

- a. Residents of the City of Romney and any other individual who resides at a property that concurrently pays the City user fee shall not be subject to payment of the annual service fee. Evidence of residency at said property paying the User's Fee must be made to the City by the individual seeking exclusion. Proof of City residency shall be provided by valid driver's license, current voter registration or City of Romney utility bill with an address within the municipal city limits.

Section 6. Effective Date

Imposition of the annual service fee shall be effective as of the 1st day of July 2015.

Section 7. Collection of Fees

Every employer within the City shall be deemed to be a Trustee for the City of Romney and shall withhold, collect and remit to the City annual service fees relative to the number of individuals subject to such-fee. Such fees shall be remitted on a quarterly basis. The employer

as Trustee has a fiduciary duty to the City for the collection of fees which shall be deemed to be held "in trust" for the use and benefit of the City.

Section 8. Compliance

The employer shall furnish to the City a report on the number of employees, status as to full time or part time, dates of employment for each employee every quarter and shall provide supplemental evidence as requested by the City to substantiate such reports. An employer who claims an exemption for an employee shall furnish each quarter a copy of the employee's proof of residency as well as proof that the City User Fee is currently being paid for the property of residence.

Section 9. Noncompliance Penalties

Any employer or self-employed individual who fails to withhold, collect and remit the Annual Service Fee on the due date shall pay a fine of 5% per individual assessed in addition to the service fee owed. Any employer or self-employed individual who fails to file required reporting as due shall be considered delinquent and shall pay a fine of 2% per month of delinquency. The City may for good cause shown waive or abate any penalty.

Section 10. Administration

- (a) The City Administrator and/or the Treasurer/Clerk either jointly or solely shall administer and enforce the provisions of this ordinance and may institute such legal proceeding as are necessary to enforce the provisions of this ordinance.
- (b) The Administration shall receive employer reports, remitted fees and shall report to City Council regularly as to amounts collected and compliance of employers and self-employed.
- (c) The Administration shall have the authority to demand from individuals and businesses subject to this ordinance any information required to make an accurate determination as to compliance with the Annual Service Fee.
- (d) The Administration shall determine in the first instance whether an individual or entity subject is subject to this ordinance, is in compliance and whether a penalty shall be imposed.
- (e) The Administration shall issue written notice informing the individual or entity of non-compliance and assessing a penalty therefore.
- (f) Any party disputing such notice of the Administration shall within thirty (30) days of such file a written objection to the City Administrator setting forth with specificity the manner of error by the City in determining non-compliance.
- (g) The Administration may upon the written request of a party objecting to the decision of non-compliance and penalty hold a hearing.
- (h) The Administration shall within 10 days of such hearing or if no hearing within 10 days of a written objection notify the objecting party of the

- decision in writing. Such decision shall be issued by certified mail, return receipt requested.
- (i) Any party disputing a decision of the Administration as to non-compliance and/or penalty may appeal the decision to the Circuit Court of Hampshire County, West Virginia and shall post bond in the amount of no less than \$500.00 or in such greater amount as to the total fee and accumulated penalties to the date of the appeal with the Circuit Clerk of Hampshire County.
 - (j) Any party appealing a decision of the Administration shall serve a petition and notice upon the Administration. When such petition and notice is so served with the return thereon the same shall be filed with the Clerk of the Circuit Court.
 - (k) The filing of an appeal shall not stay the collection of the fee unless so ordered by the Circuit Court.
 - (l) Appeal to the circuit court shall be heard as a trial de novo. A certified copy of the Administration's fee assessment shall be admissible and shall constitute prima facie evidence of the fee due under this ordinance.
 - (m) 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 Administrator'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.

Section 11. 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 (see Section 5) prescribed by the Administrator 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 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 Administrator 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 by the Administration and pay to the Administration all such fees that are due and owing according to and in the manner prescribed by the regulations promulgated pursuant hereto.

Section 12. Dedication of Revenues

- (a) All revenues generated by the city service fee imposed herein are hereby dedicated to and shall be exclusively utilized for public works projects inclusive of street improvements and public safety related thereto, and any costs related to the imposition and processing of this fee. *All revenues generated by the annual service fee shall be under the authority and direction of City Council. The Council's authority to disburse and allocate funds shall be limited to the following uses in order of priority:*

- a. Street Maintenance and Improvement
- b. Public Safety

- (b) The Annual Service Fee may not be increased within twenty four months of a prior upward modification.

Section 13. Severability

- (a) If any section, subsection, 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.

Annual Service Fee
2015

First Reading: 3/2/2015
Date

Second Reading 3/2/2015
Date

Third Reading: 4/6/2015
Date

Effective this 6th day of April 2015.

Daniel O. Hileman
Daniel O. Hileman
Mayor, City of Romney

Beverly C. Keadle
Beverly C. Keadle
Recorder, City of Romney (Seal)