

**BERKELEY COUNTY, WEST VIRGINIA
AMENDED FIRE SERVICE FEE ORDINANCE**

ARTICLE I: PURPOSE AND INTENT

Section 1.1. The purpose of this Amended Fire Service Fee Ordinance is to amend an ordinance to provide for a reasonable annual fire service fee upon the users of fire protection services within Berkeley County, West Virginia; to provide that the County Assessor of Berkeley County, West Virginia or the Berkeley County Fire Service Board shall fix the square footage of structures within the County; and to provide for publication of this Amended Fire Service Fee Ordinance as a Class II legal advertisement pursuant to § 59-3-2, et seq. of the West Virginia Code, as amended.

Section 1.2. The legislative intent of this Amended Fire Service Fee Ordinance is to generate revenue that shall be utilized to defray the cost of expenses associated with continuing, maintaining, improving, regulating and supervising fire protection services in Berkeley County, West Virginia.

Section 1.3. Fire protection services in Berkeley County, West Virginia shall be continued, maintained and improved by the Berkeley County Fire Service Board, in part, at the charge and expense of the Owners of Residential and Non-Residential Buildings located within Berkeley County, West Virginia, as said Owners are the users and beneficiaries of these special and essential fire protection services. The fees and charges imposed pursuant to this Amended Fire Service Fee Ordinance shall be imposed, assessed and collected as provided for herein.

ARTICLE II: LEGISLATIVE AUTHORITY

This Amended Fire Service Fee Ordinance is adopted by the County Council of Berkeley County, West Virginia pursuant to the authority set forth in § 7-17-1, et seq., of the West Virginia Code, as amended,

ARTICLE III: ENACTMENT AND APPLICABILITY OF FIRE SERVICE FEE

Section 3.1. There is hereby created an annual fire service fee to be imposed by the County Council of Berkeley County, West Virginia pursuant to the terms of this Amended Fire Service Fee Ordinance.

Section 3.2. Subject to the exemptions provided in Article III, Sections 3.4 and 3.5 herein, the annual fire service fee shall apply to every Owner of one or more Residential or Non-Residential Buildings located within Berkeley County, West Virginia, but not within the Municipality of Martinsburg, West Virginia.

Section 3.3. Non-Residential Buildings located within Berkeley County, West Virginia, but not within the Municipality of Martinsburg, West Virginia that are used primarily for state governmental, educational, charitable or religious purposes shall be billed for the annual fire service fee on or before July 1, 2014.

Section 3.4. Buildings owned by the federal government or used for federal governmental purposes shall not be subject to the annual fire service fee.

Section 3.5. Agricultural buildings, such as barns, not to include farmhouses used for residential purposes, shall not be subject to the annual fire service fee.

ARTICLE IV: RATES

Section 4.1. Subject to the limitations provided in Article III, Sections 3.2 through 3.5 herein, every Owner of one or more Residential or Non-Residential Buildings located within Berkeley County, West Virginia, but not within the Municipality of Martinsburg, West Virginia, shall pay an annual fire service fee for each such habitable building. In all aspects, the fire service fee conforms to the Assessor's code for determination of residential and non-residential use. For church parsonages, please refer to Article XIII, definition (e).

The total amount of the annual fire service fee shall depend upon the total square footage of the building as set forth below:

	<u>Square Feet</u>	<u>Amount</u>
(a) Residential	0 – 1,600	\$ 35.00
	1,601 – 3,000	\$ 50.00
	3,001 +	\$ 65.00
(b) Non-Residential	0 – 2,500	\$ 95.00
	2,501 – 7,500	\$ 195.00
	7,501 – 20,000	\$ 500.00
	20,001 – 35,000	\$ 975.00
	35,001 – 50,000	\$1,250.00
	50,001 – 75,000	\$1,500.00
	75,001 – 100,000	\$2,200.00
100,001 +	\$2,200.00 +	

Section 4.2. The annual fire service fee for Non-Residential Buildings that exceed one hundred thousand square feet (100,000 sq. ft.) shall be two thousand, two hundred dollars

(\$2,200.00), plus \$.0030 for each square foot exceeding one hundred thousand square feet (100,000 sq. ft.).

Section 4.3. The annual fire service fee for airport hangers that are fifty thousand square feet or more (50,000 sq. ft.) shall be five hundred dollars (\$500.00). The annual fire service fee for airport hangers that are less than fifty thousand square feet (50,000 sq. ft.) shall be one hundred dollars (\$100.00).

ARTICLE V: EFFECTIVE DATE: SCHEDULE OF PAYMENTS

Section 5.1. This Amended Fire Service Fee Ordinance shall become effective on July 1, 2012. The annual fire service fee imposed pursuant to this Amended Fire Service Fee Ordinance shall be for fire protection services rendered from the fiscal year of July 1, 2012 to June 30, 2013, and each consecutive fiscal year thereafter.

Section 5.2. With regard to Residential Buildings, the entire amount of the annual fire service fee shall be due and payable on or before September 30th of each year. Annual fire service fees for Residential Buildings that are not received on or before September 30th of each year are subject to additional charges as outlined below, plus any amounts the Berkeley County Fire Service Board expends in an attempt to collect unpaid or delinquent fees:

Square Footage of Building	If Payment Received On or Before September 30 th	If Payment Received After September 30 th and Before December 31 st	If Payment Received After December 31 st and Before March 31 st
0 – 1,600 sq. ft.	\$35.00	\$52.50	\$70.00
1,601 – 3,000 sq. ft.	\$50.00	\$75.00	\$100.00
3,001 + sq. ft.	\$65.00	\$97.50	\$130.00

Section 5.3. With regard to Non-Residential Buildings, the entire amount of the annual fire service fee may be satisfied by paying two equal installments, the first of which shall be due and payable on or before September 30th of each year, and the second of which shall be due and payable on or before April 30th of each year.

Section 5.4. Annual fire service fees for Non-Residential Buildings that are not paid in full on or before April 30th of each year are subject to contractual interest at the rate of ten percent (10%), which will accrue from May 1st to the date the delinquency is satisfied plus any amounts the Berkeley County Fire Service Board expends in an attempt to collect said unpaid or delinquent fees.

Section 5.5. The annual fire service fee shall be a debt due and payable to the Berkeley County Fire Service Board and shall be a personal obligation of the Owner. In the event that a fire department is called to the property of an Owner who is delinquent in payment of the annual

fire service fee, said Owner shall be billed the amount of five hundred dollars (\$500.00) to cover expenses associated with the call. This amount shall also be a debt due and payable to the Board and a personal obligation of the Owner, in addition to any delinquent fees or charges already owed.

Section 5.6. If an Owner fails to pay the annual fire service fee as set forth in this Amended Fire Service Fee Ordinance, then the Board may proceed with any remedies available, under the laws of the State of West Virginia, necessary to secure payment, including but not limited to, initiating civil action in the Magistrate or Circuit Court of Berkeley County, West Virginia. In the event that the Board initiates civil action and is successful in its recovery, the non-paying Owner shall reimburse the Board for any associated costs and expenses, including but not limited to, filing fees, service fees and attorney's fees.

ARTICLE VI: USE OF ANNUAL FIRE SERVICE FEES

The annual fire service fees imposed pursuant to this Amended Fire Service Fee Ordinance shall be dedicated to the Berkeley County Fire Service Board, and shall be used only to defray the cost of continuing, maintaining, improving, regulating and supervising fire protection services within Berkeley County, West Virginia. No part of the annual fire service fees shall be used for any other purposes.

ARTICLE VII: ESTABLISHING SQUARE FOOTAGE OF PROPERTY

Section 7.1. The County Assessor of Berkeley County, West Virginia and/or the Berkeley County Fire Service Board is empowered and authorized to fix the square footage of buildings for the purpose of establishing the annual fire service fees imposed pursuant to this Amended Fire Service Fee Ordinance.

Section 7.2. The County Assessor of Berkeley County West Virginia and/or the Berkeley County Fire Service Board is empowered and authorized to classify properties as "Residential" and "Non-Residential" in order to establish the amount of the annual fire service fee charged pursuant to this Amended Fire Service Fee Ordinance.

ARTICLE VIII: PUBLICATION OF FIRE SERVICE FEE ORDINANCE

This Amended Fire Service Fee Ordinance shall be published once a week for two successive weeks in a qualified newspaper published and circulated in Berkeley County, West Virginia.

ARTICLE IX: ADMINISTRATION OF ORDINANCE

Pursuant to § 59-3-1, et seq. of the West Virginia Code, as amended, the Berkeley County Fire Service Board shall make and adopt all bylaws, rules and regulations that are necessary and reasonable to carry out this Amended Fire Service Fee Ordinance.

ARTICLE X: REVIEW AND APPEAL

Section 10.1. An Owner may appeal any annual fire service fee or associated charge imposed pursuant to this Amended Fire Service Fee Ordinance by delivering to the Berkeley County Fire Service Board, by hand delivery or certified mail, a written petition setting forth the particular items of the fee or charge objected to and the reasons for the objection within thirty (30) days after receipt of notice of the annual fire service fee. If an Owner fails to deliver such a petition within thirty (30) days after receipt of notice of the annual fire service fee, then the annual fire service fee imposed shall become final and not subject to administrative or judicial review.

Section 10.2. Upon receipt of a written petition pursuant to Article X, Section 10.1, the Board shall assign a date, time and place for a hearing thereon and shall provide the petitioner with written notice of the date, time and place of the hearing, by U.S. First Class or certified mail, no less than twenty (20) days before the hearing date. A hearing scheduled pursuant to this provision shall be held no later than one hundred days (100) after the Board's receipt of the written petition.

Section 10.3. The hearing shall be informal and shall be conducted in an impartial manner by the Board, or at the Board's discretion, by a hearing examiner appointed by the Board. At the hearing, the Petitioner shall have the burden to demonstrate that the fee or charge contested is incorrect. The Board shall issue a written decision no later than sixty (60) days following the hearing.

Section 10.4. An Owner not satisfied with the Board's decision may appeal the decision to the Circuit Court of Berkeley County, West Virginia. If no appeal is filed within thirty (30) days after the Board's decision, then the decision shall become final and not subject to further review. Any amount due to the Board pursuant to its decision shall be due and payable on the next consecutive day following the date the decision becomes final.

ARTICLE XI: EXONERATION OR MODIFICATIONS

Any Owner may request a total or partial exoneration or modification from any fee or charge imposed pursuant to this Amended Fire Service Fee Ordinance by providing such request personally or in writing to the Board. Within thirty (30) days of the request, the Board shall investigate the matter and, at the next regularly scheduled Board meeting after the investigation is complete, present its recommendation regarding the exoneration or modification request to the County Council of Berkeley County, West Virginia. Subsequently, the Council shall provide the Owner, by U.S. First Class or certified mail, with written notice of its decision regarding exoneration or modification. If the Council determines that good cause exists for exoneration or modification, then it shall exonerate or modify any or all fees or charges imposed pursuant to this Amended Fire Service Fee Ordinance. If the Council determines that good cause does not exist for exoneration, then the Owner may appeal the Council's decision to the Circuit Court of Berkeley County, West Virginia.

ARTICLE XII: SEVERABILITY

The articles, sections, headings, paragraphs, sentences, clauses and phrases of this Amended Fire Service Fee Ordinance shall be severable and if any article, section, heading, paragraph, sentence, clause or phrase herein or the application thereof to any individual, entity or circumstance shall be declared unconstitutional or otherwise invalid by the judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining articles, sections, paragraphs, sentences, clauses or phrases of this Amended Fire Service Fee Ordinance or the application thereof to any individual, entity or circumstance.

ARTICLE XIII: DEFINITIONS

For purposes of this Amended Fire Service Fee Ordinance, the following words and phrases have the following meanings:

- (a) “Attic” means that portion of a building that is located immediately below the roof, and which is unfinished and not used as part of the living or working area of the building.
- (b) “Basement” means that portion of a building that is located below the level or adjoining ground, and which is unfinished and not used as a part of the living or working area of the building.
- (c) “Non-Residential Building” means any building, whether or not occupied, that is designated any use other than “Residential” per the land use code by the County Assessor of Berkeley County, West Virginia. This definition shall include all buildings used for nonprofit purposes, excluding church parsonages.
- (d) “Owner” means any person or entity listed in the records of the County Assessor of Berkeley County, West Virginia as possessing exclusive rights and control of property, whether in fee or for life. A person or entity seized or entitled to in fee subject to a mortgage, deed of trust or similar instrument securing a debt or liability of property is considered the owner until the mortgagee or trustee takes possession, after which the mortgagee or trustee is considered the Owner.
- (e) “Residential Building” means any building constructed with a value of at least one thousand dollars (\$1,000.00), whether or not occupied, for residential purposes, including mobile homes, and which is classified as “Residential” per the land use code by the County Assessor of Berkeley County, West Virginia. This definition shall include church parsonages. This definition shall not include buildings used primarily for agricultural purposes, but shall include farmhouses used for residential purposes.
- (f) “Story” means the part of a building included between any floor and the floor or roof next above, excluding basements and attics.
- (g) “Total square footage” means that sum as measured by the exterior dimensions of the building, multiplied by the number of stories, but not including the following: porches, unless

entirely enclosed for weather purposes; basements, not utilized as the living or working area of the building; attics, garages; and outbuildings not connected to the building.