

Ordinance 206

AN ORDINANCE OF THE TOWN OF BETHANY, WEST VIRGINIA, AMENDING ORDINANCE NO. 103, 120, 149, and 158 WHICH ESTABLISHED THE PUBLIC SAFETY AND SERVICE FEE, WITH RESPECT TO THE GENERAL TAX RATE FOR PROPERTY OWNERS

WHEREAS, by Ordinance No. 7, adopted January 13, 1970, as previously amended, the Town of Bethany adopted a fire protection service fee, the then present rate for which was \$16.50 per person per annum;

WHEREAS, by Ordinance No. 8, adopted January 13, 1970, as previously amended, the Town of Bethany adopted a police protection service fee, the then present rate for which was \$14.00 per person per annum;

WHEREAS, by Ordinance No. 9, adopted January 13, 1970, as previously amended, the Town of Bethany adopted a street lighting service fee, the then present rate for which was \$3.50 per person per annum;

WHEREAS, by Ordinance No. 75, adopted May 9, 1988, the Town of Bethany adopted a service fee for the maintenance and improvement of streets, the then present rate for which was \$5.00 per person per annum;

WHEREAS, by Ordinance No. 69, effective July 1, 1985, the Town of Bethany authorized a discount of \$1.00 to any person paying his or her service fees prior to August 1 of each fiscal year;

WHEREAS, by Ordinance No. 103, effective June 11, 2002, the Town of Bethany established the public safety and service fee, with respect to the general tax rate for property owners;

WHEREAS, by Ordinance No. 149, effective July 1, 2012, the Town of Bethany amended the public service and safety fee with respect to the general tax rates and classifications; and amends ordinance 158.

WHEREAS, the Town Council now proposes in the interests of fairness of application and ease of administration to consolidate such service fees into a comprehensive fee, to be known as the public safety and service fee, to be collected as provided in this Ordinance;

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF
THE TOWN OF
BETHANY, WEST VIRGINIA:**

Section 1. Legislative Intent. It is the intention of the Town Council that the costs of providing the essential municipal services of fire and ambulance protection, police protection, street lighting, and street maintenance and improvement shall be allocated in a fair and efficient manner among (I) residents of the community; (ii) persons who reside in the community for a significant portion of the fiscal year and who thereby receive a substantial benefit from the provision of essential municipal services; and (iii) other persons who receive a substantial benefit from the provision of municipal services. The Town Council takes cognizance that the present fire protection fee, police protection fee, street lighting fee and street maintenance and improvement fee are not fairly allocated among those classes of users, thus resulting in an unfair burden to some persons and an unfair benefit to others. The Council recognizes the importance of continuing to fund these essential municipal services, and it further recognizes that any public safety and service fee, in addition to attributes of fairness of allocation, must also have the attributes of ease and efficiency of administration.

Section 2. Legislative Finding. The Council finds, after due deliberation, that to achieve the goals of (I) fairly allocating the costs of essential municipal services among residents, part-year residents and others receiving benefits, and (ii) ease and efficiency of administration, and having considered alternate proposed structurings for meeting such costs, the methods of allocation described in this Ordinance (which includes both a property charge and per-capita charges, as described below) best accomplish such objectives and are authorized by Section 8-13-13 of the West Virginia Code.

Section 3. Imposition of Service Fee. A service fee for the purpose of raising revenue toward the costs to the municipality of fire and police protection, police, street lighting, and street maintenance is hereby imposed as follows:

(a) *General Rule for Property Owners.* For the owner or owners of real property in this municipality, which property is improved with one or more buildings, other than dwellings described in subsection (b) below, the service fee for such owner or owners (including individuals, corporations, partnerships, limited liability companies and similar entities, whether for-profit or nonprofit) shall be an amount equal to the number of square feet contained in all such buildings multiplied by (I) \$0.04 up to and including 500,000 square feet and (II) \$0.05 for all square footage above 500,000 square feet. for the fiscal years commencing July 1, 2026 and thereafter. Ownership of property may be determined from the indices and records in the Brooke County Courthouse in Wellsburg, West Virginia. Square footage shall be determined from the records maintained in the office of the Assessor for Brooke County, West Virginia as of July 1 of

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the fiscal year for which such service fee would be due, but if there be no such record, then as the Recorder and Treasurer of the municipality shall determine.

(b) General Rule for Resident Adults. For adult residents of the municipality who reside in a dwelling of any kind where one or more of the residents of such dwelling is directly or beneficially

the owner of the dwelling, and who do not qualify for more favorable treatment under subsections

(d) or (e) below, the service fee shall be \$50.00 for each person per annum. For purposes of this Ordinance an “adult” shall mean an individual who shall have attained the age of 18 years on or before July 1 of the fiscal year for which such service fee would be due. A dwelling which is subject of the service fee under this subsection (b) shall not also be the subject of the charge described in subsection (a) above. It shall be the responsibility of the owner or owners of such dwelling, prior to July 1st of each year, to advise the Recorder of the names and mailing addresses of all residents of the dwelling who are subject to such service fee so that such persons may properly be billed for such fee in accordance with section 4 below; otherwise the responsibility for payment shall rest with the owner or owners of such dwelling.

(c) Special Rule for Certain Resident Renters. For adult residents of the municipality who reside in a dwelling of any kind, of which none of the residents of such dwelling is directly or beneficially an owner of the dwelling; who do not qualify for more favorable treatment under subsections (d) or (e) below; and which dwelling is the subject of a charge under subsection (a), the service fee shall be \$40.00 for each such person per annum. It shall be the responsibility of the owner or owners of such dwelling, prior to July 1st of each year, to advise the Recorder of the names and mailing addresses of all residents of the dwelling who are subject to such service fee so that such persons may properly be billed for such fee in accordance with section 4 below; otherwise the responsibility for payment shall rest with the owner or owners of such dwelling.

(d) Special Rule for Students Studying Elsewhere. For an adult whose general place of residence is in this municipality but who can establish (i) that for the fiscal year for which the service fee is due he or she will be a bona fide student at a college or similar institution in another community and (ii) that he or she for such fiscal year will reside at such college or other institution or in such other community for not less than eight months of such year, the service fee for such person shall be \$12.00 per annum. The burden of establishing qualification for the provisions of this subsection (e) shall be borne by the person being charged.

(e) Special Rule for Students Studying in This Community. For an adult whose general place of residence is not in this municipality but who for the fiscal year for which the service fee is due is or becomes a student at a college or similar institution within this municipality, the service fee for such person shall be \$35.00 per annum. It shall be the responsibility of such college or similar institution to collect and account for the service fee for its students and to remit the amounts of such fee to the Recorder in accordance with section 4 below. If the academic year be divided into

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semesters or similar units, the service fee may be remitted in periodic installments without interest or penalties, so long as such remittances be received in full not later than 15 days after the start of any such semester or other unit.

Section 4. Billing and Collection. As provided more fully in Ordinance No. 50 and Ordinance No. 51, both as previously amended and as hereafter may be amended, relating, respectively, to the Treasurer and the Recorder, the Treasurer shall submit billing statements for amounts due the town pursuant to this Ordinance as promptly as may be practicable after July 1 of each fiscal year (except as provided in section 3(f) above, with respect to installment payments), and remittances of amounts due shall initially be received by the Recorder. The service fee described in this Ordinance shall be a debt due the municipality, and the municipality may enforce payment of the obligation by an action in a court of proper jurisdiction. The municipality may establish reasonable rules, regulations and policies in the billing and collection of such fee.

Section 5. Protests. Any individual or other person believing that he, she or it is aggrieved by such service fee may protest the fee by giving written notice to the Recorder setting forth his, her or its objections not later than 30 days after the date of mailing of the billing statement for such fee. The Recorder shall forward such protest to the Town Council - who shall set a time for hearing within 30 days of the filing of such protest. The Town Council shall render its decision based on the record made at the hearing, within a reasonable time, giving notice in writing of its decision to all parties concerned. The amount, if any, due the town under such decision shall be due and payable 30 days after service of the decision. Any individual or other person aggrieved by such administrative decision may within 30 days from such decision file a petition duly verified with the Circuit Court of Brooke County, requesting review by certiorari, but if there be no such filing, the decision of the Town Council shall be final and conclusive.

Section 6. Prompt Payment Discount. Any person paying the service fee in full within 30 days from the date that the billing shall have been mailed (other than payers having the benefit of the installment payments described in section 3(f) above) shall be entitled to a discount of \$1.00.

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Section 7. Penalty for Late Payment. If the service fee is not paid in full within 30 days from the date that the billing shall have been mailed, then to such delinquent bill a penalty of 3% of the service fee shall be added, and an additional penalty of 2% shall be added for each succeeding 30 days or portion thereof elapsing before payment is made.

Section 8. Violations. The refusal to comply with any provision of this Ordinance or any rule duly adopted hereunder in connection with this Ordinance shall be deemed to be a violation of the Ordinance, and any person committing such violation shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$500.00 and not not more than \$1000

Section 9. Repeal of Prior Inconsistent Ordinances. Subject to the provisions of section 12 below, Ordinance No. 7 (adopted January 13, 1970), as previously amended by Ordinance No. 14, Ordinance No. 29, Ordinance No. 47, Ordinance No. 64 and Ordinance No. 76 (adopted, respectively, December 12, 1972, May 27, 1975, June 11, 1980, May 9, 1983, and July 12, 1988), relating to the fire protection fee, is declared to be superseded by this Ordinance and is repealed as of the time that the rates and other provisions of this Ordinance finally become effective. Ordinance No. 8 (adopted January 13, 1970), as amended by Ordinance No. 15, Ordinance No. 77 and Ordinance No. 89 (adopted December 12, 1972, July 13, 1988, and June 24, 1994, respectively), relating to the police protection fee, is also superseded by this Ordinance and is similarly repealed. Ordinance No. 9 (adopted January 13, 1970), as previously amended by Ordinance No. 16, Ordinance No. 49, and Ordinance No. 78 (adopted December 12, 1972, June 11, 1980 and July 13, 1988), relating to the street lighting fee, is also superseded by this Ordinance and is similarly repealed. Ordinance No. 75 (adopted May 9, 1988), relating to the street maintenance and improvement fee, is also superseded by this Ordinance and is similarly repealed. Ordinance No. 69 (adopted 1985), relating to the prompt payment discount, is also superseded by this Ordinance and is similarly repealed. Ordinance No. 103 is also hereby repealed in its entirety. Ordinance 158 is hereby repealed in its entirety.

Section 10. Publication. The Recorder shall cause this Ordinance to be published as a Class II legal advertisement in compliance with the provisions of Section 59-3-2 of the West Virginia Code, requiring publication once a week for two successive weeks in a qualified newspaper published in the publication area, and in the event that 30% of the qualified voters of the municipality by petition duly signed by them in their own handwriting and filed with the Recorder of the municipality within 15 days after the expiration of such publication shall protest against such Ordinance as enacted, this Ordinance shall not become effective unless and until it shall be ratified by a majority of the legal votes cast thereon by the qualified voters of the municipality at a regular municipal election or a special municipal election, as Council shall direct.

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Section 11. Severability. Each section or other provision of this Ordinance is separate from the other sections and provisions, and the invalidity of one section or provision shall not affect the validity of any other section or provision. If section 3 or any part thereof shall be determined to be invalid, then pending further action by Council the prior Ordinances described in section 10 above shall be deemed not to have been repealed, and the Treasurer and the Recorder shall have full power and authority to collect the fees described in such Ordinances, as necessary to defray the costs of essential municipal services, except as a court of proper jurisdiction may otherwise decree.

Section 12. Short Title. This Ordinance may be known as the Public Safety and Service Ordinance, and the service fee described in this Ordinance may be known as the public safety and service fee.

Section 13. Effective Date. Subject to the provisions of section 10 above this Ordinance generally shall be effective from and after the date of its adoption, it being the intention of Council that the service fee hereby established shall be in effect for the fiscal year commencing July 1, 2026. No billings with respect to such fee shall be made, however, until the period of publication and protest described in section 10 shall have run and any necessary municipal election shall have been held. Pending the holding of any such election, the Ordinances described in section 9 above shall be deemed not to have been repealed, and the Treasurer and Recorder for the municipality, in the interests of preserving the public fisc, may submit billing statements under Ordinance No. 149 enacted in 2012.

Patrick J. Sutherland

MAYOR

First Reading: January 6, 2016

Second Reading (adopted): February 3, 2016