

ORDER ADOPTING ORDINANCE

At a regular session of the County Commission of Berkeley County, West Virginia, held in the Commission's Chambers, 400 West Stephen Street, Martinsburg, West Virginia, on the 26th day of August, 2010, the following Order was made and entered:

SUBJECT: Order approving the revised Fire Fee Change Ordinance, to become effective on October 1, 2010. The attached revised Berkeley County Fire Fee Change Ordinance was adopted by the County Commission on August 26<sup>th</sup>, 2010.

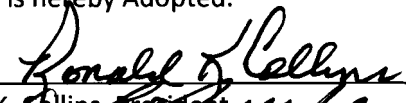
In pursuit of such Order, the following motion was offered by Anthony J. Petrucci, Commissioner; and, was seconded by William L. Stubblefield, Commissioner:

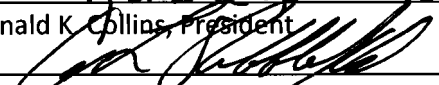
Commissioners voted as follows:


Ronald K. Collins, President	yes
William L. Stubblefield, Commissioner	yes
Anthony J. Petrucci	yes

WHEREUPON, Ronald K. Collins, President declared said Motion duly adopted; and it is therefore

ADJUDGED and ORDERED that said Motion be, and same is hereby Adopted.

  
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Ronald K. Collins, President

  
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William L. Stubblefield, Commissioner

  
\_\_\_\_\_  
Anthony J. Petrucci, Commissioner

ATTEST:

  
\_\_\_\_\_  
John W. Small, Jr., Clerk

**“DRAFT”**

**BERKELEY COUNTY FIRE SERVICE FEE ORDINANCE**

Most Recent Amendments Dated 6/2/2005

**SECTION 1**

An amended ordinance creating the Berkeley County Fire Service User Fee: Providing for an annual charge based on square footage; providing that the Assessor shall fix the square footage of property; and providing for publication of the user fee as a Class II legal advertisement in compliance with the provision of Article 3, Chapter 59, of the Code of West Virginia.

**SECTION II**

There is hereby created a Berkeley County Fire Service User Fee to be imposed by the County Commission upon the users of the fire service.

**SECTION III**

**Rates**

<u>Square Footage</u>	<u>Residential</u>	<u>Amount</u>
0-2500		\$30.00
2500 and Up		\$40.00
<u>Square Footage</u>	<u>Commercial</u>	<u>Amount</u>
0-2500		\$80.00
2501-7500		\$162.50
7501-20,000		\$400.00
20,001 and Up		\$975.00

Airport hangers shall be assessed at a rate of \$500.00, notwithstanding the size of such hanger.

Agricultural buildings, such as barns, not to include farmhouses used for residential purposes, shall not be assessed a fee.

**SECTION IV**

The County Assessor is hereby empowered and authorized to fix the square footage of property for the purpose of establishing the user service fee charged under this ordinance.

The County Assessor is further empowered and authorized to classify properties into residential or commercial property classifications for the purpose of establishing the user fee charged under this ordinance.

## SECTION V

This ordinance shall be published once a week for two successive weeks in a qualified newspaper published in this county.

## SECTION VI

### Continuation, Maintenance and Improvement of Fire Service

The service of fire protection shall be continued, maintained, and improved by the Fire Service Board, in part, at the charge and expense of the owners of all buildings of every kind and nature within the county which said owners are declared to be users and beneficiaries of such fire protection service. The charges and expenses with respect to each of such users and beneficiaries shall be imposed, assessed and collected as set out in this Ordinance. In the event the county fire board determines an increase in any such fee imposed by this section is necessary, it shall, by resolution, request the County Commission for such an increase. Procedures set forth in Article 17, Chapter 7; Section 12 of the Code of West Virginia for the initial levy of such a fee shall be followed by the County Commission in the event an increase is sought.

## SECTION VII

### Definitions: Continuation, Maintenance and Improvement of Fire Service; Legislative Intent; Fire Board to Administer Regulations; Use of Funds; Severability; and Assessment of Fees

“Residential Building” “Any building constructed with a value of at least \$1000.00, whether or not occupied, for residential purposes, including mobile homes. Residential buildings classified as such by the County Assessor shall be considered residential buildings for the purposes of this ordinance.”

“Commercial Building” and “Institutional Building” Any building which is used for commercial, institutional or industrial purposes but shall also include hotels, motels, or other buildings intended for transient lodging. Rental housing of any type is considered to be commercial for the purposes of this ordinance. Commercial and institutional buildings classified as such by the County Assessor, and industrial buildings classified as such by the West Virginia Department of Taxation and Revenue shall be classified as commercial for the purposes of this ordinance. When determining the proper fee for commercial properties, the total square footage of commercial buildings owned by a legal entity shall be considered and one fee applied per individual plat as recorded at the Berkeley County Court House.

“Mixed Use Building” means any building (excluding basement) that has a combination of residential and commercial and /or institutional uses. The predominant usage shall determine the classification.

“Story” means that part of a structure included between any floor and the floor or roof next above, excluding basements and attics.

“Basement” shall mean that portion of a building which is located below the level or the adjoining ground, and which is unfurnished and not utilized as a part of the living or working area of the building.

“Total square footage” means that sum as measured by the exterior dimensions of the structure multiplied by the number of stories, but shall not include any part of a structure encompassed by the following:

porches, (unless entirely enclosed for all weather purposes); basement (not utilized as the living or working area of the building); attics, garages and other buildings.

## SECTION VIII

### Effective Date: Schedule of Payments:

This Ordinance shall become effective August 31, 1986. The fire protection fee assessed and levied by this ordinance shall be for services rendered from July 1, 1986 to June 30, 1987, and each fiscal year thereafter.

The Fire Protection Users Fees imposed under this ordinance shall be due and payable by September 30<sup>th</sup> of each year. Residential fee is due in full on September 30<sup>th</sup>. Commercial fee may be paid in halves; the last date to pay the first half being September 30<sup>th</sup> and the last date to pay the second half being March 31<sup>st</sup> of each year.

The Fire Protection Users Fee assessed and levied under the provisions of the ordinance shall be a debt due the Berkeley County Fire Board and shall be a personal obligation of the user of the special and essential services of fire protection within the county. In case of service to a property on which the fire fee has not been paid at the time of such service, the service call will result in a bill for fees for such call in the amount of \$500.00, in addition to all delinquent fees. Delinquent fees not paid by March 31<sup>st</sup> may, at the discretion of the Fire Board, be recovered through civil action filed in the courts of this State and County or other means chosen by the Fire Board. In such case, the Fire Board is authorized to recover its court costs and fees, if any, including attorney's fees.

Payment Schedule	If Paid On or Before September 30 <sup>th</sup>	If Paid After 9/30 and On or Before December 31st	If Paid After 12/31 and On or Before March 31st
	full year	full year	full year
0-2500 square feet	\$30	\$45	\$60
2500 square feet and larger	\$40	\$60	\$80

It shall be unlawful for any person to refuse to pay the Fire Protection Users Fee provided for herein. It shall be the Users responsibility to pay and all reasonable court cost and fees, for delinquent accounts.

## SECTION IX

### Use of Funds for Fire Protection Only

The revenues received for the collection of Fire Protection User Fees shall be used only to defray the cost of the continuance, maintenance, or improvement of fire protection service within the county, and no part of such revenues shall be used for any other purposes. Any fees imposed under this article are dedicated to the county fire board for the purpose provided in this article.

## SECTION X

### Legislative Authority

The imposition of Fire Service Users Fee under this Ordinance is pursuant to authorization set for in Chapter 7, Article 17, of the West Virginia Code. In accordance with said statute, it is the legislative intent of the Ordinance that the fees imposed hereunder are based, in part, upon recognition of the following legislative finding:

- a) The size of a building (as reflected by the total square footage) is a factor which affects the cost of providing fire protection. Therefore, it is the intent and purpose of this Ordinance that the fees imposed hereunder be related, in part, to the size of the building.

### SECTION XI

The Board is here authorized to promulgate such regulations as are necessary and reasonable to carry out the provisions of this Ordinance.

### SECTION XII

#### Review and Appeal Procedure

- a) Any affected property owner may appeal any charge imposed pursuant to this Ordinance. The property owner to whom such notice is given may, within thirty days after service thereof, either personally or by certified mail, file with the Board a petition in writing, setting forth the particular items of the charge objected to, together with the reasons for the objection. If no petition is filed, the fee imposed shall become final and not subject to administrative or judicial review. The amount of the fee imposed shall be due and payable on the day following the date upon which the assessment becomes final.
- b) When the petition provided for in the preceding paragraph is filed within the time prescribed for such filing, the Board shall assign a time and a place for a hearing thereon and shall notify the petitioner of such hearing by written notice at least twenty days in advance thereof. The hearing shall be held within one hundred days of the filing of the petition.

The hearing shall be informal and shall be conducted in an impartial manner by the Board or a hearing examiner designated by the Board.

The burden of proof shall be upon the petitioner to show that the fee imposed is incorrect and contrary to law, in whole or in part. After any such hearing, the Board shall, within a reasonable time, give notice in writing of its decision. Such decision may be appealed to the Circuit Court.

- c). If no appeal is taken within thirty days after service of the administrative decision the Board's decision shall become final and conclusive. The amount, if any, due the Board under the decision shall be due and payable on the day following the date upon which such decision becomes final.

### SECTION XIII

Exoneration or Modification

Any property owner requesting total or partial exoneration from any charge may do so either personally or in writing to the Board. The Board within a reasonable time, shall cause to be investigated, any request for exoneration. The board shall at the next regular meeting after completion of the investigation, make and communicate to the County Commission its recommendation regarding the exoneration. If good cause for exoneration is found by the Commission, it shall exonerate or modify any or all imposed charges, and shall notify the property owner in writing of its actions. If the Commission does not exonerate or modify as requested by the property owner, an appeal may be filed in pursuance to this article, with the Circuit Court of Berkeley County.

SECTION XIV

It is hereby declared to be the intention of the County Commission that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance be severable and if any section paragraph, sentence, clause or phrase of this Ordinance or the application thereof to any person or circumstances 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 sections, paragraphs, sentences, causes or phrases of this Ordinance or the application thereof to any other person or circumstance.



Ronald K. Collins, President

William L. Stubblefield

Anthony J. Petrucci

BERKELEY COUNTY COMMISSION

*Ronald K. Collins*  
*William L. Stubblefield*  
*Anthony J. Petrucci*

ATTEST:

*John W. Small, Jr.*

John W. Small, Jr., County Clerk

Date: June 27, 2002

Amended August 24, 1995  
Amended Section VIII May 29, 1997 (Effective 5/29/97)  
Amended Section III June 27, 2002 (Effective 6/27/2002)  
Amended Section III June 2, 2005 (Effective 6/2/2005)  
Amended Section VII & VIII December 11, 2008