

**AN ORDINANCE PERMITTING THE TOWN OF NUTTER FORT TO ASSESS FIRE SERVICE FEES FOR PROPERTIES LOCATED OUTSIDE OF THE CORPORATE LIMITS OF THE TOWN BUT WITHIN THE TOWN'S FIRST DUE AREA AND PERMITTING THE TOWN OF NUTTER FORT TO FILE A LIEN ON PROPERTY WITHIN ITS FIRST DUE AREA FOR UNPAID AND DELINQUENT FIRE SERVICE FEES AND PROVIDING FOR NOTICE THEREOF**

**WHEREAS**, West Virginia Code §8-13-13 authorizes a municipality to impose reasonable rates, fees and charges upon users of municipal services; and

**WHEREAS**, the West Virginia legislature's language under West Virginia Code §8-13-13 is based on the premise that a municipality incurs some expense for furnishing, installing, maintaining, or improving a service it renders to citizens; and

**WHEREAS**, existing West Virginia Supreme Court decisions indicated that the purpose of West Virginia Code §8-13-13 is to allow municipalities to enact fee ordinances to defray the cost of certain municipal services and impose the fee on citizens who are users of such services; and

**WHEREAS**, the Town of Nutter Fort is required by the West Virginia State Fire Commission to render fire protection services in its First Due Area. The Town has determined there are currently 1,673 residential structures and 187 commercial structures that are within the First Due response area of the Nutter Fort Fire Department. Among the Town's First Due Area, only 776 of the residential structures and 91 commercial structures are within the corporate limits of Nutter Fort.

**WHEREAS**, The Town assesses a fire service levy within its corporate limits which funds approximately 65% of the cost of its fire protection services. Substantial funding is provided by the Town of Nutter Fort by general revenue provided by taxes within the Town limits. Meanwhile, the Town receives no revenue for providing fire protection services from its paid Fire Department outside of the Town corporate limits. Nonetheless, the Town expends substantial expenses and manpower at a significant cost to Nutter Fort to provide fire protection services to these additional residences and businesses, and;

**WHEREAS**, it is the intention of the Town Council of Nutter Fort to assess a fire service fee outside of its corporate limits and within its First Due Area and to file and enforce a lien for unpaid and delinquent fees in order to provide funding for fire protections rendered outside its Town limits.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF NUTTER FORT THAT:**

Article \_\_\_\_ LEGISLATIVE PURPOSE: MAINTENANCE.

Fire protection service shall be continued, maintained and improved by the Town, in part, at the charge and expense of the owners of the buildings and structures of every kind and nature located within the Fire Service District (First Due Area) of the Nutter Fort Fire Department as designated by the West Virginia State Fire Commission and West Virginia State Fire Marshal, which owners are declared to be users and beneficiaries of fire services as contemplated by West Virginia Code 8-13-13.

The charges and expenses with respect to each of such users as set out in this article shall be based and imposed, in part, upon recognition of the following legislative findings:

- (a) The size of a non-residential structure, as reflected by the total square feet, is a factor which affects the cost of providing fire protection and, therefore, the fees imposed hereunder are related in part to the size of the building.

Article \_\_\_\_ DEFINITIONS.

For the purposes of this article, the following terms shall have the meaning respectively designated unless it is clear from the context that a different meaning is intended.

- (a) "Residential unit structure" means any structure or unit which is used or intended by the nature of its construction to be used as a single-family dwelling by persons for living or sleeping quarters, but shall not include unit structures intended primarily for transient lodging, including without limitation, hotels, motels, rest homes and hospital rooms.
- (b) "Dual residential unit structure" means any structure or unit which is used or intended by the nature of its construction to be used as a two (separate) family dwelling by persons for living or sleeping quarters, and having only two units within such structure, but shall not include unit structures intended primarily for transient lodging, including without limitation, hotels, motels, rest homes and hospital rooms. Such structure shall include but not be limited to duplexes.
- (c) "Multiple-family residential unit structure" means a residential unit structure having more than two family dwellings or units within such structure. Such structure shall include but not be limited to apartment buildings, condominiums, townhouses or boarding houses. Such structure shall exclude hotels, motels, tourist homes, etc.
- (d) "Nonresidential unit structure". All other buildings not included within the definitions of "residential unit structure". Such structures shall include, but not be limited to all commercial establishments, schools, government buildings, etc. If a structure has multiple uses such as residential and commercial, it will be classified as a non-residential unit.
- (e) "Total square feet" means that sum as measured by the exterior dimensions of each structure on a lot multiplied by the number of stories, also including enclosed porches,

finished basements, garden centers, finished attics, detached garages, utility buildings and car washes with roofs. The following shall not be included in the calculation of total square footage: canopies for banks, hotels, gas stations and retail stores.

- (f) "Mayor" means the Mayor of the Town of Nutter Fort.
- (g) "Owner" means the owner of record of any tract or parcel of real estate, as reflected by the records maintained in the office of the Clerk of the County Commission of Harrison County, West Virginia but may also include the grantee or transferee of any interest in any real estate by unrecorded deed, or by an owner-financed sale evidenced by written agreement, such as a "land contract", provided that the parties to any such transaction are required to notify the Treasurer as to which party to any such transaction shall be the responsible to pay any fire service fees due and payable pursuant to this article.
- (h) "Treasurer" means the Town of Nutter Fort's Treasurer.
- (i) "Fire Chief" means the Town of Nutter Fort's Fire Chief.
- (j) "Nutter Fort Fire Department" means the Fire Department of the Town of Nutter Fort and all firefighters serving as volunteers within said Department.

Section \_\_\_\_ ADMINISTRATION

- (a) The Treasurer or her duly authorized representative is hereby empowered to make such rules and regulations not in conflict with the provisions of this article relative to the offering and providing of fire protection services as are necessary to protect the property or the safety or health of the public, and no persons shall fail to comply with any such rule and regulation so promulgated.
- (b) The Treasurer shall administer all sections of this article dealing with financing, billing, collection, etc., and is determined to carry out the provisions of all sections of this article with the same.
- (c) The Treasurer is hereby empowered to adjust, settle or cancel any charge or fee required or made under this article or any controversy which may arise in the administration of this article. However, such exercise of authority by the Treasurer shall be in a uniform manner, and not exercised in a capricious or arbitrary fashion and a written or electronic record shall be kept of any and all such adjustments, settlements or cancellations.

Article \_\_\_\_ RATES; FEES; CHARGES ESTABLISHED.

The fees or charges levied, imposed and assessed pursuant to this article for the maintenance, continuance and improvement of fire protection utility services, outside of the corporate limits but within the First Due Area, shall be as follows:

- (a) Owner - single family residential unit                      \$150 per year
- (b) Owner – dual residential unit structure                      \$150 per year per unit
- (c) Owner – multiple family residential  
Unit structure    \$0.045 x gross square feet + \$100 per year
- (d) Owner – nonresidential unit  
Structure    \$0.045 x gross square feet + \$100 per year

Article \_\_\_\_ BILLING AND COLLECTION OF FEES.

- (a) All fees and charges for fire protection services shall be billed and collected by the Treasurer and shall not be pro-rated for less than thirty days.
- (b) Charges for the fire protection service may be billed on a monthly, quarterly or annual basis as determined by the Treasurer and all charges shall be billed in advance of the services being rendered.
- (c) To avoid the late payment penalty imposed by subsection (d) hereof, payment for any fire protection service fee imposed by this article, shall be paid within twenty (20) days of the date of the bill for services is mailed.
- (d) For the purpose of nonresidential unit structures that are subject to a written lease agreement, the fire fee thereon shall be considered a utility as may be defined in said lease agreement.
- (e) Delinquent Charges; Penalty. Any charge for service remaining unpaid twenty days after the billing date shall be deemed delinquent and a late payment penalty of ten percent (10%) of the unpaid charge for that billing shall be assessed. In the event that any such delinquent charge remains unpaid for twelve months, an additional penalty equal to interest at the rate of ten percent (10%) per annum of the billing shall be assessed.

Article \_\_\_\_ CHARGE OR FEE DEBT DUE TOWN.

The fees or charges provided for by this article shall be a debt due the Town. The Town may collect any such fee or charge and all accrued penalties by action against the owner of property against whom the service charges have been assessed by action before the Magistrate Court of Harrison County or by appropriate proceedings in the Circuit Court of Harrison County.

Article \_\_\_\_ ASSESSMENT – RULES AND REGULATIONS GENERALLY.

The Treasurer shall make and promulgate, from time to time, suitable regulations governing the services hereby provided, the making of statement of accounts, the collection

thereof, and such other rules and regulations as s/he may deem proper or necessary for the enforcement of this article.

Article \_\_\_\_ CHARGES ARE RESPONSIBILITY OF PROPERTY OWNER; OWNER'S RESPONSIBILITY.

- (a) Each and every property owner of residential unit structures, dual residential unit structures, multiple-family residential unit structures and nonresidential unit structures shall be responsible for payment of the fire protection service fee charges assessed, imposed and levied under this article.
- (b) It shall be the responsibility of the owner or owners of all buildings and structures within the Town to notify the Treasurer of any change in ownership and other items requested by the Treasurer within thirty days of such change.
- (c) The Town of Nutter Fort will utilize square footages supplied by a combination of county records, measurement by Town employees and/or information supplied by the property owners for purposes of billing this fire fee. It shall be the responsibility of the owner of the building to review these square footages and notify the Town of any changes within sixty days of the billing. Failure to notify the Town of any discrepancies will void the owner's right for reduction of previous billings. If the owner determines that the Town is not billing at sufficient square footage, the owner must notify the Town within sixty days or the owner will be subject to a penalty under Section \_\_\_\_ of this article. The penalty shall be the lesser of all fire fees for the duration of owner's ownership of the property from the enactment of this article, plus penalties and interest at the highest rates allowed by law, or five years of fire fees, plus penalties and interest at the highest rates allowed by law.

Article \_\_\_\_ PROTESTS.

The owner of any such building above feeling aggrieved by a charge or fee for fire protection service may protest the same by giving written notice under oath to the Treasurer setting forth his/her objections on or before thirty-five (35) days after the billing date. The owner shall present information and documentation to the Treasurer concerning his/her objections with regard to the charge or fee for fire protection service. The Treasurer shall consider the information and documentation and make a determination concerning the appropriate charge or fee to be assessed. If the owner is not satisfied with the Treasurer's determination, the owner may continue the protest by notifying the Treasurer in writing and paying a non-returnable filing fee of \$50.00. Upon receipt of such protest, the Treasurer shall report the same to the Fire Service Fee Appeals Board, which shall set a date within thirty (30) days of the filing of the protest for a hearing thereon. Any such owner shall have the right to be heard concerning such protest in person or by an attorney at such hearing. The Fire Service Fee Appeals Board 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. Any decision made by the Fire Service Fee Appeals Board shall not have any bearing on the valuation

placed on property by the Harrison County Assessor. The amount, if any, due the Town under such decision shall be due and payable thirty (30) days after service of the decision. Any person aggrieved by such decision may, within thirty (30) days from the service of the decision, file a petition duly verified with the Circuit Court of Harrison County, requesting review certiorari; otherwise, such decision becomes final and conclusive.

Article \_\_\_\_ FIRE SERVICE FEE APPEALS BOARD.

There is hereby established a Fire Service Appeals Board consisting of three members, one of whom shall be a member of Council appointed by the Mayor, one of whom shall be the Fire Chief, the third shall be a resident of the Town appointed by Council. The members' terms, except for the Fire Chief, shall be for a term of 2 years. Any vacancy for whatever cause shall be filled as soon as possible, but no longer than 30 days after the vacancy occurs.

Article \_\_\_\_ EXEMPTIONS.

No structure or building shall be exempt from the fees imposed by this article, whether the title or ownership thereof and therein be vested in the United States of America, the State, or any political subdivision thereof, or whether the property is used for educational, literary, scientific, religious, charitable or cemetery purposes, or otherwise be exempt from the payment of real property taxes under the provisions of Article X of the Constitution of the State of West Virginia.

Article \_\_\_\_ RESTRICTED USE OF REVENUES – FUTURE RATES AND CHARGES.

All revenues received from the collection of fire protection fees provided in this article shall be used only to defray the cost of and the continuance, maintenance, and improvement of fire protection services within the First Due Area of the Nutter Fort Fire Department as designated by the West Virginia Fire Commission and the West Virginia State Fire Marshal and no part of such revenues shall be used for any other municipal purpose. Any future adjustment of the rates and charges imposed by this article shall be determined by applying the same percentage adjustment equally to all rates and charges imposed by this article.

Article \_\_\_\_ PENALTY.

Whoever violates any provisions of the article, for which no other penalty is provided, shall be fined not more than five hundred dollars (\$500.00).

If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and Council determines that it would have adopted this Ordinance without the invalid provision.

This Ordinance shall become effective July 1, 2022.

Passed by Council of the Town of Nutter Fort on FIRST READING on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Passed by Council of the Town of Nutter Fort on SECOND READING on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
TOWN RECORDER