

ORDINANCE NO. 31
AN ORDINANCE PROVIDING FOR THE LEVY AND COLLECTION OF
A PUBLIC UTILITIES TAX

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLEASANT VALLEY:

SECTION ONE. Definitions.

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

Person. Individuals, firms, partnerships, associations, corporations and combinations thereof, of whatever form or character.

Public Utility Service. The services and tangible personal property purchased within this municipality from a seller, as hereinafter in this section defined, namely electric service, gas service, including bottled or liquid gas, if the seller thereof is classified as a public utility subject to the jurisdiction of the Public Service Commission of West Virginia; and water service, if purchased, used or consumed within the corporate limits of this municipality. Telephone service and sanitary sewer services are not included within the definition of public utility service herein.

Purchaser. Every person who purchases, uses or consumes a public utility service, as defined herein.

Seller. Every person, whether a public service corporation, a municipality or private corporation, classified as a public utility and subject to the jurisdiction of the Public Service Commission of West Virginia, who sells, furnishes or supplies electric, gas or water, utilities services. For the purpose of this ordinance, public service districts are excluded from the definition of "Seller".

User. The owner or tenants of private residential property or the owner or tenant of property used for commercial or industrial purposes, and every combination thereof, of every kind or description.

SECTION TWO. Imposition and levying of tax, amount of tax.

There is hereby imposed and levied upon each and every purchaser of a public utility service an excise tax upon the privilege of purchasing, using, or consuming, within the corporate limits of this municipality, such public utility service. Such tax shall be in the amount of two percent of the charge, exclusive of any federal or state tax thereon, made by the seller against the purchaser with respect to each public utility service, which tax in every case shall be collected by the seller and paid by the purchaser upon the amount of each periodic statement rendered such purchase by the seller and shall be paid by the purchaser to the seller at the time the purchase price or such charge shall become due and payable under the agreement between the purchaser and the seller. The tax imposed and levied by this section is in addition to all other taxes imposed and levied by this municipality.

SECTION THREE. Collection, time of payment, accounting, effective date of article, proration.

It shall be the duty of every seller in acting as the tax collecting medium or agency for this municipality to collect from each purchaser for the use of this municipality the tax hereby imposed and levied at the time of collection the purchase price charged for its public utility service, and the amount of tax actually collected during each calendar month shall be reported by each seller to this municipality and each seller shall remit the amount of tax shown by the report to have been collected to this municipality on or before the last day of the first calendar month following the month in which collected. The tax imposed

and levied by this article shall apply to periodic statements rendered after April 30, 2011, for public utility service rendered to April 30, 2011, and when any such periodic statement covers public utility service rendered both before and after such date, only that portion of the charge for public utility service rendered after such date shall be subject to such tax, and the portion subject to such tax shall be such portion of the total charge as the number of days after April 30, 2011, within the period covered by such periodic statement, bear to the total number of days, covered by such periodic statement. The required reports shall be in the form prescribed by the official of this municipality charged with the responsibility of collecting taxes due this municipality.

SECTION FOUR. Records.

Each and every seller shall keep and maintain complete records showing all purchases of public utility service within the corporate limits of this municipality, which records shall show the charge made against each purchaser, the dates such public utility service was furnished, the date of payment therefore and the amount of tax imposed hereunder, and such records shall be kept open for inspection by the duly authorized agents of this municipality at reasonable times, and the duly authorized agents of this municipality shall have the right, power and authority to make at the expense of this municipality such transcripts thereof during such times as they may desire.

SECTION FIVE. Exemptions.

The tax hereby imposed and levied shall not apply to the following transactions, which transactions are hereby exempted from such tax:

- (a) Purchase of public utility service by a public utility for resale.
- (b) Purchases of public utility service by the United States of America, the State of West Virginia and the political subdivisions, municipalities, boards, commissions, authorities and public corporations thereof.
- (c) Purchases of tangible personal property such as appliances or the like, as distinguished from the public service supplied.
- (d) Charges for telephone services which are paid by the insertion of coins into coin-operated telephones, and specific charges or tolls for telephone calls to points outside the corporate limits of this municipality.
- (e) Nonrecurring or one-time charges incidental to the furnishing of public utility service.
- (f) Any telephone service.
- (g) Any sanitary sewer service.

SECTION 6. Non-liability of utility, duty of municipality, refunds, rules and regulations.

There shall be no liability upon the seller for erroneously collecting the tax hereby imposed and levied or for erroneously failing to bill for such tax as a result of a good faith mistake on the part of the seller. When any purchaser contends that such tax is not owed by such purchaser on the ground that the public utility service was not purchased, used or consumed within the corporate limits of this municipality, the seller shall refer the question to the official of this municipality charged with the responsibility of collecting taxes due to this municipality and such seller shall thereafter collect or refrain from collecting such tax from such purchaser for such public utility service as instructed in writing to do by such official of this municipality. Any and all claims for refunds of any such tax shall be presented to this municipality and not to the seller.

SECTION SEVEN. Enforcement provisions, penalties.

Any amount of tax due and unpaid under this article shall be a debt due this municipality. It shall be a personal obligation of the purchaser and shall be a lien upon all property of the purchaser. The lien shall have priority over all other liens and obligations except those due the state and the United States of America. Any such lien shall attach when the obligation to pay such tax accrues. The lien shall attach when the obligation to pay such tax accrues. The lien shall be enforceable by this municipality as any other lien against the property of a debtor.

Any purchaser who willfully fails or refuses to pay the tax hereby imposed and levied and any seller or purchaser violating any of the provisions hereof or any lawful rule and regulation promulgated hereunder shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five hundred dollars. The failure or refusal to pay the tax for public utility service purchased, upon or consumed during different periodic statement periods shall constitute a separate and distinct offense.

SECTION EIGHT. Notice to Utilities.

The tax hereby imposed and levied shall not be effective until this municipality gives sixty (60) days written notice by certified mail of the effective date of the ordinance to any public utility doing business within this municipality which is required to collect the tax imposed and levied hereby.

This ordinance shall be effective upon passage.

Passed by the Pleasant Valley City Council this 16th day of February, 2011.

Barbara Metcalfe

Mayor

ATTEST:

Rebecca Teets

City Clerk