

ORDINANCE NO. 2019-12

AN ORDINANCE ESTABLISHING AND IMPOSING A FEE ON ELECTRIC METERS/BILLS TO FACILITATE FUNDING FOR MARSHALL COUNTY 911 AND PERMITTING ELECTRICAL PROVIDERS A MECHANISM TO RECEIVE REASONABLE COMPENSATION FOR THEIR EFFORTS IN COLLECTING THE FEES

WHEREAS, the Marshall County Fiscal Court is responsible for promoting public safety and the general welfare of the citizens of Marshall County, Kentucky; and

WHEREAS, the operation of a 911 or emergency communications system is one of the most critical of all public services, indispensable and necessary for the safety of the citizens of Marshall County to ensure prompt responses to emergencies; ~~and~~ and to enable performance of public functions relating to the provision of ambulance services, police, and fire protection; and

WHEREAS, the Marshall County Fiscal Court, pursuant to KRS 65.760 and by enabling ordinance, has established "Marshall County 911"; and

WHEREAS, there is currently a fee-based system for financial support based upon a per-month charge on "land-line" phones in Marshall County, Kentucky; and

WHEREAS, the ever-increasing use and reliance on mobile phones and the concomitant decreasing existence of land-line phones has resulted in the placement of an unfair burden of supporting Marshall County 911 on a disproportionately small segment of the citizens of Marshall County, Kentucky -- namely, the elderly and businesses; and

WHEREAS, the Marshall County Fiscal Court is unable under current law to assess fees to mobile phones;

WHEREAS, the amount of fees received by Marshall County 911 from land-line phones has been decreasing for a number of years and continues to decrease, resulting in a lack of adequate funding to continue to operate Marshall County 911 efficiently; and

WHEREAS, the lack of funding from land-line phone fees places Marshall County 911 at serious risk of losing its ability to continue to operate in a field with rapid advancements in technology requiring new and modern equipment; and

WHEREAS, if Marshall County 911 is unable to continue to operate, all emergency communications systems and dispatching services will have to be outsourced to an outside agency; and

WHEREAS, the Marshall County Fiscal Court sees the need of keeping Marshall County 911 in operation as being a critical and necessary service to the citizens of Marshall County; and

WHEREAS, KRS 67.083(3) provides that the Marshall County Fiscal Court may enact ordinances in furtherance of public functions, including the provision of ambulance services, police, and fire protection; and

WHEREAS, KRS 65.760-(3) is a specific provision which expressly permits local governments to fund 911 emergency telephone services by the imposition of fees, more particularly stating: "The funds required by a local government to establish and operate 911 emergency service ... may be obtained through the levy of any ... fee not in conflict with the Constitution and statutes of this state"; and

WHEREAS, the Marshall County Fiscal Court believes that distributing the burden of funding for Marshall County 911 among the citizens through a fee on electric meters is more equitable; that it bears a reasonable relationship to the benefit received, and requires more persons to support the system than would a fee on real property tax bills, water meters, and the existing "land-line" phone fee; and

WHEREAS, where there are active residential and commercial electric meters, there is the ever-present and inherent risk of fire, and also the likelihood of persons being at or nearby those locations who could foreseeably require the assistance of a variety of emergency services;

WHEREAS, in City of Lancaster v. Garrard County, 2013-CA-716 (2017), the Kentucky Court of Appeals has expressly permitted fees on utility meters as an appropriate mechanism for funding emergency 911 communication services; and

WHEREAS, there are currently four electricity providers in Marshall County, those being Benton Electric System, Jackson Purchase Energy, West Kentucky RECC, and the Tennessee Valley Authority; and

WHEREAS, the Marshall County Fiscal Court desires for those electricity providers to have an ability to receive reasonable compensation for their efforts in collecting fees on electric meters/bills for Marshall County 911; and

NOW, THEREFORE, BE IT HEREBY ORDAINED by the Marshall County Fiscal Court as follows:

SECTION ONE

That there is hereby established, imposed, and implemented a monthly fee on active electric meters provided to occupied households and businesses in Marshall County, Kentucky, calculated at \$7.00 per month per active residential and commercial electric meter. An active electric meter is defined as any electric meter that is producing revenue.

SECTION TWO

That every electricity provider in Marshall County, Kentucky shall collect the herein established fee and remit amounts collected by the end of each month to the Marshall County

Treasurer. The fees received by the Marshall County Treasurer shall be accounted for and kept separate and apart from other accounts, and may only be used for those purposes as permitted by state law.

SECTION THREE

That the electricity providers shall be permitted to retain 3% of withholdings (~~“3% retainage”~~) for the administration of collecting ~~this~~the monthly fee set forth in Section One for Marshall County 911. In the event that ~~an electricity provider has a bona fide and good faith belief that 3% retainage will not provide adequate and/or full compensation for the duties imposed by this ordinance~~the 3% retainage will not fully compensate the electricity provider for collecting the fee in accordance with its normal, customary billing practices and cycles utilized to collect amounts owed by its electric customers, the electricity provider may petition the Marshall County Fiscal Court to request ~~an alternative compensation arrangement~~additional withholdings. The Marshall County Fiscal Court may agree to ~~an alternative compensation arrangement~~additional withholdings if it determines that the 3% retainage will not provide full compensation after reviewing the electricity provider can show to a reasonable degree provider’s petition and any supporting evidence submitted in support of ~~certainty that 3% retainage will not provide adequate and/or full compensation~~the petition. For purposes of this Ordinance, “withholdings” means those fee monies collected by an electricity provider on active electric meters pursuant to Section One of this Ordinance.

SECTION FOUR

That a party subject to this fee may file a written petition for relief to the Marshall County Fiscal Court if that party has a reasonable basis to believe that the party is being unfairly subjected to a “double-fee,” in which case the Marshall County Fiscal Court shall provide relief upon the presentation of sufficient proof. An example of a “double-fee” could be a case where a single-family residence that houses a single unit of residents has, for whatever reason, two or more electric bills/meters servicing that one residence.

SECTION FIVE

That the Marshall County Fiscal Court shall review the fee imposed by this Ordinance on an annual basis to ensure that it is adequately helping to cover the costs of operating Marshall County 911 without unduly burdening Marshall County citizens.

SECTION SIX

That the land-line fee established pursuant Ordinance No. 91-02, shall be suspended at all times that the fee established by this ordinance is being collected. Ordinance No. 2019-09 is hereby repealed upon passage of this Ordinance.

FIRST READING: _____

SECOND READING: _____

PUBLICATION: _____

Passed and Effective this the ____ day of _____, 2019.

KEVIN NEAL, Judge-Executive
Marshall County Fiscal Court

ATTEST: _____
Marshall County Fiscal Court Clerk