



WHITLEY COUNTY FISCAL COURT

ORDINANCE NO. 2011-07

AN ORDINANCE ESTABLISHING AN APPLICATION PROCESS FOR USE OR PROGRAMMING OF TWO-WAY RADIOS PERTAINING TO COUNTY OWNED COMMUNICATIONS FREQUENCIES AND DESCRIBING PENALTIES AND FORFEITURE OF RADIOS FOR WHICH NO APPLICATION HAS BEEN ISSUED.

WHEREAS, the Fiscal Court of Whitley County deems it is necessary that control be established concerning the entitlement of programming for and broadcasting over radio frequencies owned and utilized by the County of Whitley, Commonwealth of Kentucky.

THEREFORE, BE IT ORDAINED BY THE COUNTY OF WHITLEY, IN THE COMMONWEALTH OF KENTUCKY, AS FOLLOWS:

FREQUENCY RESTRICTIONS:

1. No mobile or portable radio with the capacity of broadcasting/transmitting on a radio frequency pertaining to county owned frequencies shall be possessed by an individual unless application has been made and approved by the 911 Board. No business or person shall install, program or sell any radio capable of broadcasting/transmitting on the frequency band owned by the county, unless an application has been issued to that vendor by the 911 Board. Application(s) for possession of such radio shall be on a form application provided by the 911 Director or designee. Federal and State entities in their official capacities are exempt and authorized by the Fiscal Court to utilize emergency frequencies as described above.

Authorization to possess receive only transmissions by a public scanner or a mobile/portable programmed for received only is not required to have an approved application from the 911 Board or designee.

County Official Frequencies:

- 1.(a) The Fiscal Court authorizes emergency service agencies transmit capabilities on county owned official frequencies including, but not limited to, Whitley County law enforcement officers, emergency medical, fire and rescue personnel, animal control and emergency management. County employed personnel must make application to the 911 Board for authorization to program personally owned radio(s). All other entities shall make application to the 911 Director or Designee and approved by the 911 Board for authorization to possess transmit capabilities on any or all of the county official frequencies. The following conditions/restrictions shall apply to all county official

frequencies:

- a. The fire control frequency is used primarily for the paging (alert) to notify the respected fire department of an emergency or fire. Once the respected department arrives on scene, all communications including, but not limited to, traffic control, ground or emergency operations shall be changed/switched over to that given departments frequency(s) for the duration of the emergency. If during the emergency, the incident commander/officer in charge or other officer requires mutual aid or other communications with the 911 center, he or she shall use the fire control frequency to communicate with dispatch.
- b. The mutual aid frequency is defined as an official frequency to be utilized while responding to an emergency requiring multiple agencies / departments to provide the interoperability to coordinate and control a mass or multiple responses to provide communications to those agencies. This frequency is restricted for use in a multiple agency response. Whitley County law enforcement officers, emergency medical, fire and rescue personnel, animal control and emergency management are authorized to posses transmit capability on this frequency as needed or required during any given emergency.
- c. The emergency medical service frequency is primarily used by EMS. Whitley County law enforcement officers, emergency medical, fire and rescue personnel, animal control and emergency management are authorized to posses transmit capability on this frequency as needed or required during any given emergency.

MEMBER REQUIREMENTS:

2. Application for possession and use of such personally owned radios, whether (hand-held) portable or mobile in a motor vehicle shall include name, address, drivers license number and agency of the applicant including the applicants unit number, the radio brand(s), model number(s), and serial number of the radio(s); the business or entity programming the radio, the agency or department or chief shall acknowledge by his signature on the application that the person seeking the application is affiliated with the agency or department.

NON-MEMBER REQUIREMENTS:

3. At such time as the applicant no longer remains a member of the agency or department, or if such applicant sells said personally owned radio, the radio shall be deprogrammed within three (3) business days of the date the person is no longer a member of the agency or department or prior to the sale of said radio. The responsibility of deprogramming the radio shall be that of the person to whom an application was granted. The Department shall notify the 911 Board if the affiliation is terminated or ceases between the applicant and the department within (3) days that the applicant is no longer a member of said department.

AGENCY REQUIREMENTS:

4. It is encouraged that any agency both local or adjoining Whitley County using radio equipment maintain records reflecting the make, model and serial number of equipment. It is also encouraged that agencies maintain records reflecting the associated caller ID with the radio equipment.

PROGRAMMING / RADIO IDENTIFICATION / SECURITY:

5. Any mobile or portable radio being utilized in the function of radio communications within Whitley County and operating (Transmitting/Receiving or a Combination thereof) on frequencies owned by the Whitley County Fiscal Court or other entity thereof, shall follow this ordinance.

5(a). All radio vendors, providers that shall have the abilities to program such radios that may transmit on county official frequencies, shall make application to the 911 Director and approval from the 911 Board to be a radio programmer(s) for county owned frequencies. Applications shall include the business name or entity, Federal ID number (EIN), address, business phone, fax and email address.

5(b). Programming shall be conducted by a communication technician(s) and shall not violate any Federal, State or Local guidelines. Programming of any radio containing county official frequencies must have approval from the 911 Board prior to the radio(s) being programmed. Radio equipment shall follow manufactures specifications and be within the limits of the FCC type acceptance. Any radio equipment operating on any of these frequencies shall be able to transmit information which can identify the radio unit (CALLER ID). The format of this information shall be compatible with MDC1200 and/or FLEETSYNC I technology. The CALLER ID information shall follow a format as to identify the using department, mobile or portable, the members' unit number or ID number or the vehicle number. This ID information shall be maintained in a database to be used for reference and further programming. It is encouraged that all radio equipment being programmed have a security code which restricts the free programming or changing of the frequency data information. Vendor(s) must submit a report of all radios programmed when requested by the 911 Director or Board within (3) days of the request.

5(c). Disable (Kill/Stun) Function: Authorized programming vendors shall have the ability to disable (kill/stun) all mobiles / handhelds radios if directed by the 911 Board. Radios being requested to be disabled (killed/stunned) are defined as: **a.** individuals that are not authorized to transmit on county frequencies, **b.** individuals that are abusing the airways with unnecessary or invalid information, **c.** improper use of county frequencies, or **d.** radios that have been stolen, pawned or not deprogrammed according to this ordinance. Individuals or departments that have had radios disabled (killed/stunned) may petition the 911 Board for reactivation. The 911 Board is authorized to deny or reject any such petition pertaining to the severity of the violation. Appeals may be made in accordance with Section 9 Appeals Process.

5(d). Other frequencies programmed in County Owned Radios: Authorized programming of departmental frequencies in county owned radios is permitted as long as a valid FCC License is presented to and approved by the 911 Board.

VIOLATIONS:

6. Any person who violates any section of this Ordinance shall be subjected to punishment as stated in KRS 432.570. Any radio for which an application has not been granted may be seized and become the subject of a forfeiture action or Order of the Court with jurisdiction of such matters. Unauthorized programming of communications devices by any person(s) shall be subjected to punishment as stated in KRS 432.570.

“ (1) It shall be unlawful for any person except a member of a police department or police force or an official with written authorization from the head of a department which regularly maintains a police radio system authorized or licensed by the Federal Communications Commission, to have in his or her possession, or in an automobile or other vehicle, or to equip or install in or on any automobile or other vehicle, any mobile radio set or apparatus capable of either receiving or transmitting radio or other messages or signals within the wave length or channel now or which may hereafter be allocated by the Federal Communications Commission, or its successor, for the purpose of police radios, or which may in any way intercept or interfere with the transmission of radio messages by any police or other peace officers. It shall be unlawful for any car, automobile, or other vehicle other than one publicly owned and entitled to an official license plate issued by the state issuing a license for the car, to have, or be equipped with the sets or apparatus even though the car is owned by an officer. This section shall not apply to any automobile or vehicle owned or operated by a member of a sheriff's department authorized by the fiscal court to operate a radio communications system that is licensed by the Federal Communications Commission or other federal agency having the authority to license same. Nothing in this section shall preclude a probation and parole officer employed by the Department of Corrections from carrying on his person or in a private vehicle while conducting his official duties an authorized, state issued portable radio apparatus capable of transmitting or receiving signals.

(2) Any person guilty of violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty dollars (\$50) and not exceeding five hundred dollars (\$500), or imprisonment not exceeding twelve (12) months, or both so fined and imprisoned.

(3) It shall be the duty of any and all peace officers to seize and hold for evidence any and all equipment had or used in violation of the provisions of this section, and, upon conviction of the person having, equipping or using such equipment, it shall be the duty of the trial court to order such equipment or apparatus destroyed, forfeited, or escheated to the Commonwealth of Kentucky, and said property may be ordered destroyed, forfeited, or escheated as above provided without a conviction of the person charged with violating this section.

(4) Nothing contained in this section shall prohibit the possession of a radio by:

(a) An individual who is a retailer or wholesaler and in the ordinary course of his business offers such radios for sale or resale;

(b) A commercial or educational radio or television station, licensed by the Federal Communications Commission, at its place of business; or

(c) An individual who possesses such a radio, provided it is capable of receiving radio transmissions only and is not capable of sending or transmitting radio messages, at his place of residence; licensed commercial auto towing trucks; newspaper reporters and photographers; emergency management agency personnel authorized in writing by the director of the division of emergency management (for state personnel) or chief executive of the city or county (for their respective personnel); a person holding a valid license issued by the Federal Communications Commission in the armature radio service; peace officers authorized in writing by the head of their law enforcement agency, Commonwealth's attorneys and their assistants, county attorneys and their assistants, except that it shall be unlawful to use such radio to facilitate any criminal activity or to avoid apprehension by law enforcement officers. Violation of this section shall, in addition to any other penalty prescribed by law, result in a forfeiture to the local law enforcement agency of such radio.

(5) The provisions of this section shall not apply to a paid or volunteer member of a fire department or a paid or volunteer member of a public ambulance service licensed in Kentucky who has been given permission in writing by the chief of the fire department and the chief of each law enforcement agency whose frequency is to be monitored, or the director of the ambulance service and the chief of each law enforcement agency whose frequency is to be monitored, to possess a radio capable of receiving on a frequency allocated to a police department or law enforcement agency, whether the radio is in a vehicle or not.

(6) The secretary of the Finance and Administration Cabinet is hereby empowered by issuance of a secretary's order to exempt from the prohibitions and penalties of this section the possession and use of any and all radio communication equipment that he finds is necessary to be owned and used by members of the general public and other non-police persons for utilization in the N.O.A.A. weather radio system.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 176, sec. 1, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 226, sec. 111, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 418, sec. 9, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 110, sec. 1, effective July 14, 1992. -- Amended 1986, Ky. Acts ch. 241, sec. 1, effective July 15, 1986. -- Amended 1980 Ky. Acts ch. 137, sec. 1, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 435, sec. 1, effective June 17, 1978. -- Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 14, sec. 443, effective January 2, 1978. -- Amended 1976 Ky. Acts ch. 166, sec. 1 -- Created 1942 Ky. Acts ch. 66, sec. 1.”

7. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.
8. This Ordinance shall become effective immediately upon 2nd reading and publication.

Appeal Process:

9. Individuals that have had radios disabled (killed/stunned) for violating this ordinance and disagree with the 911 Directors decision, may appeal the decision directly to the Emergency Management Committee. The committee may refer the issue to the Judge Executive or Designee for a final decision.

First Reading: Introduced for the first reading on Motion made by Myers and seconded by Fuson and passed by majority of vote of the Whitley County Fiscal Court in duly assembled session on this 19th day of July, 2011.



COUNTY JUDGE EXECUTIVE

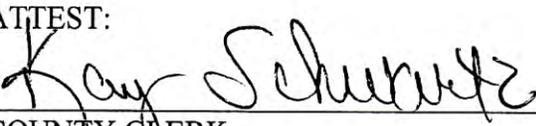
ATTEST:


COUNTY CLERK

Second Reading: Introduced for the second reading on Motion made by BROWN and seconded by Wells and passed by majority vote of the Whitley County Fiscal Court in duly assembled session on the 16th day of August, 2011.



COUNTY JUDGE EXECUTIVE

ATTEST:


COUNTY CLERK