

**AN ORDINANCE OF NICHOLAS COUNTY, STATE OF WEST VIRGINIA,
AUTHORIZING THE IMPLEMENTATION OF THE
NICHOLAS COUNTY FIRE SERVICE FEE**

WHEREAS, West Virginia Code Chapter 7, Article 17, Section 12, as amended, provides the Nicholas County Commission with the authority to impose reasonable fire service rates, fees and charges;

WHEREAS, it is deemed in the best interest of the citizens and residents of Nicholas County, West Virginia, and necessary and appropriate, to impose such reasonable fire service rates, fees, and charges; and

WHEREAS, the Nicholas County Fire Board has presented a petition containing the signatures of at least ten percent (10%) of the qualified voters of Nicholas County, West Virginia, duly and properly signed, and filed with the Clerk of the County Commission of Nicholas County, West Virginia, directing that the said County Commission impose such a fee;

NOW THEREFORE, the Nicholas County Commission hereby sets forth and charges that:

SECTION 1: APPLICABILITY

This Ordinance shall apply to all owners of residential buildings, residential rental buildings, commercial buildings, and institutional buildings that are located and situate in the areas and zones served by the following volunteer fire departments: Richwood Volunteer Fire Department; Summersville Volunteer Fire Department; Craigsville/Beaver/Cottle Volunteer Fire Department; Nettie Volunteer Fire Department; Birch River Volunteer Fire Department; Wilderness Volunteer Fire Department; Kesslers Cross Lanes Volunteer Fire Department; and departments issued a primary response district within Nicholas County, WV for fire service protection as authorized by the Nicholas County Commission, WV State Fire Commission and the WV State Fire Marshall's Office; the geographic areas of which are defined as all of Nicholas County Primary Fire Service Districts. Owners of record as of the first day of July of each year shall be responsible for the full and complete payment of any amount levied per the ordinance.

SECTION 2: AMOUNT LEVIED

A. There is hereby imposed and levied upon the owners of all residential buildings (as defined in Section 6A) as users of fire protection service, a fire protection fee or charge of Thirty-Five Dollars (\$35.00) per residential building, per calendar year.

B. There is hereby imposed and levied upon the owners of all commercial or institutional buildings (as defined in Section 6C) as users of fire protection service, a fire protection fee or charge at the following rates:

- i. One Hundred Dollars (\$ 100.00) for buildings containing Three

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Thousand (3,000) Square Feet or less;

- ii. Two Hundred Dollars (\$ 200.00) for buildings containing Three Thousand and One (3,001) Square Feet up to Five Thousand (5,000) square feet;
- iii. Three Hundred Dollars (\$ 300.00) for buildings containing Five Thousand and One (5001) Square Feet to Seven Thousand, Five Hundred (7,500) Square Feet;
- iv. Four Hundred Dollars (\$ 400.00) for buildings containing Seven Thousand, Five Hundred and One (7,501) Square Feet to Ten Thousand (10,000) Square Feet;
- v. Five Hundred Dollars (\$ 500.00) for buildings containing Ten Thousand and One (10,001) Square Feet to Twenty-Five Thousand Square Feet;
- vi. Seven Hundred Fifty Dollars (\$ 750.00) for buildings containing Twenty-Five and One (25,001) Square Feet to Fifty Thousand (50,000) Square Feet;
- vii. One Thousand, Five Hundred Dollars (\$ 1,500.00) for buildings containing Fifty Thousand and One (50,001) Square Feet to Seventy- Five Thousand (75,000) Square Feet;
- viii. Two Thousand Dollars (\$ 2,000.00) for buildings containing Seventy-Five and One (75,001) Square Feet to One Hundred Thousand (100,000) Square Feet;
- ix. Three Thousand Dollars (\$ 3,000.00) for buildings containing in excess of One Hundred Thousand (100,000) Square Feet;

In the event several buildings, all being on the same tract of land, the said owner shall be assessed a single, combined fee for the grand total of square footage of all buildings/units of said tract of land.

C. There is hereby imposed and levied upon the owners of all residential rental buildings (as defined in Section 6B) as users of fire protection service, a fire protection fee or charge of Thirty-Five Dollars (\$ 35.00) per residential unit for buildings containing no more than two (2) units. Residential buildings containing three (3) or more units shall be assessed at the commercial building rate by square footage.

SECTION 3: BILLING AND COLLECTION OF FEES

A. All fees and charges for fire protection services shall be billed and collected by the Nicholas County Sheriff and will be assessed to the owner as of the first day of July of each year.

B. The fees levied by this Ordinance shall be collected from each owner and user in annual installments due as stated on the invoice. Such fees shall be delinquent if not paid at the Office of the Sheriff for Nicholas County, West Virginia, forty-five (45) days after the due date.

C. Delinquent Charges; Penalty - any charge for service remaining unpaid twenty (20) days after the due date shall be deemed delinquent and a late payment penalty often percent (10%) of the unpaid charge for that billing shall be assessed. In the event that any such delinquent charge remains unpaid for twelve (12) months, an additional penalty equal to interest at the rate of ten percent (10%) per annum of the billing shall be assessed.

SECTION 4: COLLECTION FOR FIRE PROTECTION SERVICE

The fees imposed and levied by this Ordinance shall be collected in the aforescribed manner and process and shall be used in a manner and for the purpose of fire protection services commencing as of the effective date of this Ordinance, and thereafter. Fees or charges levied by this Ordinance will be utilized for priority needs or purposes of member departments which will include expenditures related to the collection anchor operation of the fire protection fee system.

After payment and/or encumbering for any and all collection and/or operational expenses, fees levied by this Ordinance shall be distributed to each of the seven (7) fire departments, with each department receiving the fees collected within their primary fire service district, each holding a separate fund for the collection of fees by the Sheriff of Nicholas County. This will apply to each respective department: Richwood Volunteer Fire Department; Summersville Volunteer Fire Department; Craigsville/Beaver/Cottle Volunteer Fire Department; Nettie Volunteer Fire Department; Birch River Volunteer Fire Department; Wilderness Volunteer Fire Department; Kesslers Cross Lanes Volunteer Fire Department; and departments issued a primary response district within Nicholas County, WV for fire service protection as authorized by the Nicholas County Commission, WV State Fire Commission and the WV State Fire Marshall's Office; the geographic areas of which are defined as all of Nicholas County Primary Fire Service Districts.

The established Districts of the County will be as follows:

District 1: Richwood Volunteer Fire Department

District 2: Summersville Volunteer Fire Department

District 3: CBC Volunteer Fire Department

District 4: Nettie Volunteer Fire Department

District 5: Birch River Volunteer Fire Department

District 6: Wilderness Volunteer Fire Department

District 7: Kesslers Cross Lanes Volunteer Fire Department

District 8: Quinwood Volunteer Fire Department

District 9: Gauley River Volunteer Fire Department

SECTION 5: DISBURSEMENT OF FUNDS

The disbursement of fees collected in a previous quarter, will occur no later than the fifteenth (15th) day of the next quarter to each respective department. Ninety-nine (99%) percent will be distributed to the respective department, while one percent (1%) going to the administrative fund to cover costs of the fee collection (WV Code 7-17-12). Fiscal quarters are to be established in the calendar year.

Each department receiving funds from the results of this ordinance, shall within 90 days of the implementation of this ordinance create an additional bank account in the name of the department along with "County Fire Fee Fund" to add to the transparency of each department. (Ex. Nettie Volunteer Fire Department County Fire Fee Fund). The funds collected and distributed in result of this ordinance may ONLY be deposited into this account, and failure to do so will result in suspension of collection rights of that department.

SECTION 6: ENFORCEMENT AND DELINQUENT PAYMENT

The fees assessed and levied pursuant to the provisions of this Ordinance shall be a debt due the Nicholas County Commission and may be collected by proceedings instituted in courts of competent jurisdiction. The Nicholas County Commission shall not have a lien on any property as security for payment due under this Ordinance.

SECTION 7: DEFINITIONS

1. "Residential Building" means any structure which is used or intended by the nature of its construction to be used by persons for living and sleeping quarters, including modular and mobile homes, but shall not include hotels, motels, or other buildings intended primarily for transient lodging.
2. "Residential Rental Building" means any structure which is rented in whole or in part for the purpose of single or multiple family dwelling.
3. "Commercial Building" and/or "institutional Building" means any structure which is used or intended by the nature of its construction to be used for any purpose other than "residential" but shall not be deemed to include apartments or other residential rental units;
4. "Farm Building" is defined as all buildings used exclusively for bona fide, active, and operational farming, including pole barns, barns, detached garages, smokehouses, utility buildings, grain silos/bins.

SECTION 8: EXPEMPTIONS

- A. Any structure, building or buildings statutorily or otherwise legally exempt from County property taxes, i.e. churches, military establishments, and charitable organizations, shall be exempt from fees set forth in this Ordinance; also exempt are Farm Buildings (as defined in Section 6) from fees set forth in this Ordinance
- B. Financial Hardship Exemption - One- and two-family residential property owners may apply for a fire service fee hardship exemption if the said owner fully and completely qualifies with regard to all income and residence eligibility criteria set forth in the **Residential Hardship Exemption Application**, as may from time to time be amended. Copies of the **Residential Hardship Exemption Applications** will be available at the Office of the Nicholas County Commission and each owner's Fire Station. Owners that are desirous to apply for the aforementioned exemption must apply on an annual basis, and are required to file an application each year with up to date financial information. Said information must be provided with the application of exemption, for review.

SECTION 9: APPLICATION OF STATUTE

This Ordinance is enacted under the specific authority granted to the Commission under the terms of Chapter 7, Article 17 of the West Virginia Code, and the powers and limitations therein contained are incorporated in this Ordinance by reference.

SECTION 10: PROTESTS

The owner of any such building above, feeling aggrieved by a charge or fee for fire protection service fee, shall file on or before thirty-five (35) days following the aforementioned billing date for the said fire service fee, shall file a written objection to the same. All properly and legally filed written objections and/or grievances shall be reviewed by the Nicholas County Fire Board in a reasonable period of time, and the said Nicholas County Fire Board shall render and issue a written decision as to the said objection and/or grievance. The owner of any such building above, feeling aggrieved by the denial of a written application for a residential property hardship exemption, may protest the same by delivering written notice to the Nicholas County Fire Board on or before fourteen (14) days following the dated of the aforementioned denial or grievance. Upon proper filing and receipt of such a protest and/or objection, the Nicholas County Fire Board shall conduct in a reasonable period of time, a hearing as to the objections and/or grievances and shall render and issue a written decision as to the said objection and/or grievance.

The owner of any such building above, feeling aggrieved by the decision of the Nicholas County Fire Board following a hearing as to an objection to the charge or fee for fire protection service fee, or aggrieved by a written decision of the Nicholas County First Board with regard to an application for a residential property hardship exemption, may protest the same by delivering written notice to the Nicholas County Commission on or before fourteen (14) days following the dated of the aforementioned denial or grievance, which shall review the same, and should such protest warrant a hearing, the said Commission shall set a time for such a hearing within thirty (30) days of filing such protest. The Nicholas County Commission shall render a decision based

on the record made at the hearing within a reasonable time, giving notice in writing of its decision to all parties concerned. The amount, if any, due the Nicholas County Commission under such decisions shall be due and payable thirty (30) days after service or notice of the decision. Any person aggrieved by such administrative decision may, within thirty (30) days from date of service and/or notice of the decision, and shall file a petition, duly verified, with the Circuit Court of Nicholas County, West Virginia, requesting review by certiorari. Failure to file such a petition in a proper and timely manner shall render the decision of the Nicholas County Commission final and conclusive.

SECTION 11: COUNTY COMMISSION OVERSIGHT; DEPARTMENT INTEGRITY

The Nicholas County Commission reserves the right at any time to suspend the disbursement of funds to any fire department by a majority vote being held in a regular or special meeting, should there be irregularities or other concerns of potential financial impropriety, namely the misuse of funds coming from this Fire Fee.

Each department must submit their Annual Report (of the previous calendar year) to the Nicholas County Commission, as well as the Nicholas County Fire Board by the first (1st) day of May for review, ensuring transparency and oversight of the use of the funds that are provided by this ordinance. Department representatives may be called to testify in a regularly scheduled meeting to either governing body, should any concerns be raised about the use of these funds.

Fire departments are to uphold their responsibilities within the confines of regulations provided by the West Virginia State Fire Marshall's Office. Pursuant to this ordinance, if at any time a department collecting funds provided by the Nicholas County Fire Fee is found to be in non-compliance, or is found to be outside the permissible operations of the West Virginia State Fire Marshall's Office such funds shall be temporarily suspended until the non-compliance is resolved.

SECTION 12: PUBLICATION OF FIRE SERVICE FEE ORDINANCE

This Nicholas County Fire Service Fee Ordinance shall be published by Class II Publication, being once a week for two (2) successive weeks, in a qualified newspaper published and circulated in Nicholas County, West Virginia.

SECTION 13: SEVERABILITY AND LIABILITY

Severability – Should any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance be declared invalid by an entity of lawful control, or court of competent jurisdiction, such a determination or declaration shall not invalidate or other render illegal, unlawful, or unenforceable all remaining provisions of this Ordinance, and the same shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

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Liability – The enactment of this Ordinance shall not constitute a representation, guarantee, or warranty of any kind by the County Commission of Nicholas County, West Virginia, or by any official or employee thereof, and shall create no liability upon the County Commission of Nicholas County West Virginia, and/or any official, employee, assign, or agent thereof.

SECTION 14: EFFECTIVE DATE

First Reading	_____
Second Reading	_____
Public Comment	_____
Third Reading	_____

PROPOSED - DRAFT
2/11/2020

This Ordinance shall become effective, on the ____ day of _____, 2020, and the first annual fee shall become payable as outline by the Ordinance and/or the owner's invoice.

**THE COUNTY COMMISSION OF NICHOLAS COUNTY, WEST VIRGINIA
aka THE NICHOLAS COUNTY COMMISSION, a statutory body.**

ENTERED by the County Commission of Nicholas County, West Virginia, on this the ____ day of _____, 2020.

WITNESS the following signatures and seals.

Garrett Cole, President

Lyle Neal, Commissioner

County Clerk, Robert Painter, II.

Lloyd Adkins, Commissioner