

ORDINANCE NO: 21-2018

AN ORDINANCE GRANTING TO TAYLOR ELECTRIC COOPERATIVE, INC. THE RIGHT, PRIVILEGE AND FRANCHISE TO CONDUCT WITHIN THE CITY OF ABILENE, TAYLOR AND JONES COUNTIES, TEXAS, AN INTERNET SERVICE PROVIDER BUSINESS AND TO UTILIZE THE PUBLIC RIGHT-OF-WAY FOR BROADBAND INTERNET SERVICES FACILITIES, PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHT-OF-WAY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS THAT:

SECTION 1. Abilene, Texas, hereinafter called "City" hereby grants to Taylor Electric Cooperative, Inc., a Texas electric cooperative corporation, hereinafter called "TEC" or "Cooperative", its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public thoroughfares, and, hereinafter referred to as "Public Rights-of-Way", for the purpose of erecting, maintaining, constructing, extending, repairing, protecting, operating, and replacing therein and thereon a system of poles, pole lines, towers, wires, guys, cables, conduits, transformers, pedestals and other broadband internet equipment, facilities and appurtenances necessary or proper for the transmission and distribution of broadband internet and other telecommunications facilities and systems, into, in, within, from, across and through pole lines, conduits and all other appurtenant equipment to deliver, transport, and distribute internet and other broadband signals and services in, out of, and through the City as now existing, or as said city limits may hereafter be extended; and granting TEC, its successors and assigns, the authority to use such for the purpose of the transmission, distribution, delivery and sale of internet services to the City, and to the inhabitants of the City, or any other person or persons, firms or corporations, wherever located within or without the City limits for use by such purchaser or purchasers for any purpose authorized by law for which internet services may be used or for any other purpose or use which is or may become normal or customary in the broadband industry in Texas, said consent being granted for a term of twenty-five (25) years from and after the effective date of this ordinance.

SECTION 2: Cooperative shall lay, maintain, construct, operate, and replace its broadband facilities and other equipment in such a manner as to not interfere with traffic and shall promptly clean up and restore to approximate original condition all Public Rights-of-Way which it may disturb. When Cooperative makes, or causes to be placed, obstructions in any Public Rights-of-Way, Cooperative shall place, erect, and maintain barriers and lights to identify the location of such excavations or obstructions. In determining the location of Cooperative's new facilities within City, Cooperative shall minimize interference with then existing underground structures of City or other utility franchisees. Likewise, in determining the location of the facilities of the City and other utility franchisees within City, City shall minimize interference with the existing facilities of Cooperative, to the extent practical, and shall require other utility franchisees to minimize interference with existing facilities of Cooperative. In the event of a conflict between the location of the facilities of Cooperative and the location of the facilities of City or other utility franchisees within Public Rights-of-Way that cannot otherwise be resolved, City or an authorized agent of City, shall resolve the conflict and determine the location of the respective facilities.

When the Cooperative is required by the City to remove or relocate its facilities to accommodate construction in or along streets and alleys by City, and Cooperative is eligible under federal, state, county, local or other programs or statutes for reimbursement of costs and expenses incurred by Cooperative as a result of such removal or relocation, and such reimbursement is required to be handled through City, Cooperative's costs and expenses shall be included in any application by City for reimbursement, if Cooperative submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable notice to Cooperative of the deadline for Cooperative to submit documentation of the costs and expenses of such relocation to City. Otherwise, the Cooperative will not be reimbursed for cost or expenses associated with removal or relocation of its facilities to accommodate construction in or along streets and alleys by the City.

If City abandons any Public Right-of-Way in which Cooperative has facilities, such abandonment shall be conditioned on Cooperative's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned reimbursing Cooperative for all removal or relocation expenses if Cooperative agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests the Cooperative to remove or relocate its facilities and Cooperative agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 3: In the event of injury to any person or damage to any property by reason of Cooperative's construction, operation, maintenance, or replacement of Cooperative's facilities within Public Rights-of-Way, Cooperative shall indemnify and keep harmless City from any and all liability in connection therewith, except to the extent such injury or damage is attributable to City's sole negligence.

SECTION 4: Upon its acceptance of this franchise ordinance, Cooperative agrees to immediately obtain, if it does not already carry under its existing policies of insurance, a sufficient amount of liability insurance to protect against claims for bodily injuries, including death; property damages and bodily injuries, including death, resulting from motor vehicle accidents; and other types of damages typically covered by commercial general liability insurance, which may arise in connection with Cooperative's exercise of the rights granted under this franchise. City shall be named as additional insured on Cooperative's policies, and Cooperative shall promptly provide to City proof of said insurance in the form of acceptable certificates of insurance waiving subrogation against the City. The certificates of insurance will state that the insurance carrier has issued the insurance specified and that such policies are in force. Company will give City thirty (30) days prior written notice of any material change in, renewal of, or cancellation of, such policies.

SECTION 5: In addition to the rates charged for broadband internet services as supplied, Cooperative may make and enforce reasonable charges, rules and regulations for service rendered in the conduct of its business, including a charge for services rendered in the inauguration of

broadband internet service. Cooperative may require, before furnishing service, the execution of a contract for such service. Cooperative shall have the right to contract with each customer with reference to the installation of, and payment for, any and all of the line extensions from the connection thereof with the Cooperative's primary lines in the Public Rights-of-Way to and throughout the customer's premises.

SECTION 6: Cooperative shall be entitled to require from each and every customer, before broadband internet services are commenced or reinstated, a deposit in an amount not to exceed the estimated cost of the installed equipment necessary for the telecommunications services being requested by such customer. Said deposit shall be retained and refunded upon cancellation of services and successful completion of the terms of service in accordance with and shall bear interest as provided by statute or substantive rules for electric cooperatives. Cooperative shall be entitled to apply said deposit, with accrued interest, to any indebtedness owed Cooperative by the customer making the deposit. Cooperative is also entitled to require customer payment of aid to construction costs for requested service installations that would not meet the return on investment within the service contract period

SECTION 7: Nothing contained in this Ordinance shall be construed as conferring upon Cooperative any exclusive rights or privileges of any nature whatsoever.

SECTION 8 As compensation and rental for the use of the streets, alleys and public ways of City in the conduct of its business under this franchise, Cooperative, and its successors and assigns, agree to pay, and City agrees to accept, on or before the 1st day of January, 2019, and on or before the same day of each succeeding year during the life of this franchise, the last payment being made on or before the 1st day of January 2044, a sum of money equal to what Cooperative would pay for city-preferred access line rates set by the City of Abilene, Texas for the year in question if Cooperative were a certified telecommunications provider regulated by the Public Utility Commission of Texas ("PUCT").

All amounts payable to the City under this section shall be surcharged to Cooperative's customers taking internet service within the corporate limits of the City. Said annual payments above provided shall be exclusive of and in addition to ad valorem taxes.

Any and all such payments made by Cooperative pursuant to this Section shall be credited on any amount imposed, levied or assessed against Cooperative by the City, pursuant to ordinance or otherwise, at any time as a charge (whether designated as rental, tax or otherwise) for the use by Cooperative of City's streets, alleys and public ways.

All franchise fees that Cooperative fails to pay within the time period specified in this section shall bear interest according to the following formula: for the period January 1 through June 30, the prime rate last published in the Money Rates Section of the *Wall Street Journal*, Southwest Edition in the preceding December (the "Prime Rate"); and for the period from July 1 through December 31, the prime rate last published in the Money Rates Section of the *Wall Street Journal*, Southwest Addition, in the preceding June.

Cooperative agrees that on the same date that payments are made, as provided in this Section 8, it will file with the City Secretary a sworn report showing the access lines, identified by type, within the City used by the Cooperative for the provision of internet services to its residential and commercial customers within City during the calendar year preceding the date of payment. City may, if it sees fit, have the books and records of Cooperative examined by a representative of City to ascertain the correctness of the sworn reports agreed to be filed herein.

SECTION 9: If it becomes necessary in furnishing broadband internet services as contemplated under this franchise, the City grants to Cooperative the right and privilege to take up pavements and sidewalks, if any, in and upon said streets, alleys, highways or other public right-of-ways in said City for the purpose of making such excavation and installation as may be necessary. Such work and excavation shall be performed in such manner as will cause the least reasonable inconvenience to the public including traffic control measures in conformance with the Manual on Uniform Traffic Control Devices (MUTCD), and Cooperative shall promptly restore or cause to be restored to as good condition as before working thereon all such pavements, sidewalks, streets, alleys, highways or other public right-of-ways excavated by it to the reasonable satisfaction of the City Manager or his designated representative, expeditiously, and in accordance to any and all applicable compaction standards or regulations adopted by the City as well as stormwater quality protection provisions.

SECTION 10: When this franchise ordinance becomes effective, all previous ordinances of City granting franchises for internet or other telecommunications services delivery purposes which were held by Cooperative, if any, shall be automatically canceled and annulled, and shall be of no further force and effect. Should Cooperative become a certified telecommunications provider entitled to operate under the statewide provisions then this Franchise Agreement will terminate and Cooperatives franchise rates shall thereafter be governed by the applicable statute.

SECTION 11: Final Passage/Acceptance. Cooperative shall, within thirty (30) days from the date of the final passage of this Ordinance by the City Council of the City of Abilene, file with the City Secretary of Abilene, a written statement signed in its name and behalf by an officer of Cooperative duly authorized by its Board of Directors in the following form:

"The Honorable Mayor and the City Council of the City of Abilene:

"Taylor Electric Cooperative, for itself, its successors and assigns, hereby accepts the attached Ordinance finally passed by the City Council of Abilene, the _____ day of _____, 201__, and agrees to be bound by all of its terms and provisions. If Cooperative accepts this ordinance, by the filing of its written acceptance, this ordinance shall become effective on _____, 201_____."

PASSED ON FIRST READING this 12th day of April, 2018.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being at least ten(10) consecutive publication

days, the first of which appearing not more than twenty (20) days next before the introduction of the ordinance before council, to permit the public to be heard.

PASSED ON SECOND AND FINAL READING this 26th day of April, 2018.

ATTEST:



CITY SECRETARY



MAYOR

APPROVED:



CITY ATTORNEY

