

ORDINANCE NO. 368

AN ORDINANCE GRANTING A 20-YEAR FRANCHISE TO COOS-CURRY ELECTRIC COOPERATIVE, INC., FOR THE OPERATION OF AN ELECTRIC POWER TRANSMISSION DISTRIBUTION SYSTEM WITHIN THE CITY OF BROOKINGS; PRESCRIBING THE TERMS, CONDITIONS AND MANNER OF THE ACCEPTANCE OF SUCH FRANCHISE; REPEALING ORDINANCE NO. 167; AND DECLARING AN EMERGENCY.

The City of Brookings ordains as follows:

Section 1. Ordinance No. 167 of the City of Brookings (hereinafter referred to as "City") is hereby repealed; said repeal effective on the date of this Ordinance's passage. The respective claims of the City of Brookings and Coos-Curry Electric Cooperative, Inc. (hereinafter referred to as "Cooperative"), under said Ordinance No. 167 shall be settled between said parties as of the date that the Cooperative shall have accepted the franchise herein provided in this Ordinance, said acceptance being in written form provided the City by a duly authorized resolution of the Cooperative's governing board.

Section 2. There is hereby granted unto the Cooperative a cooperative corporation organized under the laws of the State of Oregon, upon the terms and conditions hereinafter set forth, the right, privilege and franchise of installing, owning, operating, and maintaining an electric power service transmission and distribution system by means of poles, conduits, wires, cables, and other equipment or appliances in, upon, over, under and along the streets, alleys or other public places within the corporate limits of the City of Brookings for a period of twenty years from the date of the enactment of this Ordinance.

Section 3. During the period of this franchise the City shall not levy upon or exact from the Cooperative any license fee, franchise or privilege tax, or other charges, the consideration stated hereinbelow being in lieu of all such taxes, license fees or charges.

Section 4. In consideration of the granting of said franchise, the Cooperative shall furnish the City, without charge, 116 street lights with wattage not to exceed \_\_\_\_\_ watts, including installation, maintenance, replacement of bulbs, and electric energy for operation of same. It is understood that more than these numbers of street lights now are in operation within the City; that the City shall designate the 116 lights to be furnished pursuant to the terms hereof, and the remaining lights and all additional lights installed hereafter in excess of 116 shall be upon the customary contractual basis; provided however, that the said 116 lights are furnished based on a theoretical population of the City of 3,490 persons, or one light for each 30 persons, and at the time when the census of the City shall show the population of the City to exceed 3,490 persons, then and at that time, the Cooperative shall furnish one additional light as the City may designate for each increase of 30 persons over said theoretical population of 3,490 persons.

Section 5. The Cooperative shall advise the City Engineer and City Manager of the City of the proposed location of any new, substitute or replacement poles, conduits, wires, cables or other equipment not less than five (5) days prior to commencement of work thereon or installation or relocation pertinent thereto; and further, the City Engineer or City Manager may require reasonable changes in proposed locations for the purpose of protecting public health, safety, welfare and traffic.

Section 6. All openings or breaks in public streets, thoroughfares, alleys or the like shall be made and repaired promptly at the sole expense of the Cooperative and shall be lighted and barricaded for the protection of the public.

Section 7. The Cooperative shall, and by its acceptance hereof does, expressly assume all risk of operation of its system within the City and shall indemnify and save and hold harmless the City therefrom, including, but not limited to, all damages which may be awarded against it in favor of any person or persons, firm or corporation resulting from any act or thing done or omitted to be done by the Cooperative by virtue of the authority herein granted or said corporation's business operations.

Section 8. Nothing herein contained shall be construed as authorizing the Cooperative, its employees or agents to violate any Ordinance of the City herewith now in existence or hereafter enacted; and further, the Cooperative shall not violate any provisions of the Oregon Anti-Trust Law codified in ORS 646.705 to 646.836 nor shall the granting of this franchise be in any way construed as in violation thereof; and further, the Cooperative shall not infringe, violate or engage in any activity prohibited by the Oregon Unlawful Trade Practices Act as defined in ORS 646.605 to 646.652, this franchise being subject to the sanctions contained within such statutory provisions including, but not limited to, ORS 646.646.

This franchise is subject to said above-stated terms and statutory provision; and further, should any part hereof contravene such terms or provisions then any provisions herein contained contrary thereto shall be deemed null and void.

Section 9. Notwithstanding anything herein stated to the contrary, City shall retain all of its rights and remedies under ORS 221.420 to 221.470. The City shall retain its general municipal police powers and the exercise of such over the erection, installation, replacement and maintenance of poles, wires and similar apparatus of the Cooperative in streets, alleys and public ways; and further, such police power shall extend to the designation of on what parts of streets there may be erected poles, lines, conduits or other apparatus or, in proper cases, to require relocation thereof, and compel all generally accepted improvements which tend to decrease the obstruction of the streets or increase the safety or convenience of the public in their use; and further, said power shall extend, although not be limited to, the regulation of the use, location, height and size of utility poles as part of the City's general planning and zoning process and power.

Section 10. No franchise shall be granted unto any other person, firm or corporation to engage in a similar business within the City of Brookings during the term of this franchise, except upon payment of comparable consideration to the City of Brookings in money or services, unless otherwise permitted under the provisions hereof or mandated by any state or federal law, rule or regulation.

Section 11. The grant of franchise herein made shall be void and of no effect unless the Cooperative shall of itself accept and agree in writing to the terms and conditions of this Ordinance, which acceptance shall be filed with the City Recorder prior to thirty (30) days after the passage of this Ordinance.

Section 12. Either the City or the Cooperative, as the case may be, may submit a written request to the other for the purposes of renegotiating any or all portions of the franchise hereinunder granted.

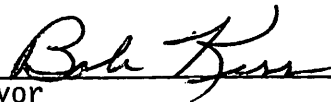
Section 13. It is hereby determined that it is in the interest of the public welfare, peace and safety of the City of Brookings that this ordinance be immediately adopted because the continued service of electrical supply to the City is of paramount importance to the citizens of the City and therefore an emergency is declared to exist, and that this ordinance shall be in full force and effect from and after the date of its passage.

First Reading: December 14, 1982


Second Reading: December 14, 1982

Passage: December 14, 1982

Signed by me in authentication of its passage this 16 day of  
December, 1982.

  
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Mayor

ATTEST:

  
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City Recorder