

**CITY OF DAYTON, KENTUCKY
ORDINANCE NO. 2024#18**

AN ORDINANCE OF THE BOARD OF COUNCIL OF THE CITY OF DAYTON, KENTUCKY, PROVIDING FOR THE CREATION OF A FRANCHISE FOR THE DISTRIBUTION OF ELECTRICAL AND NATURAL GAS ENERGY WITHIN THE CITY OF DAYTON, KENTUCKY, DEFINING THE TERMS AND CONDITONS THEREOF AND PROVIDING FOR A BID PROCEDURE THEREFOR; AND ALTERNATIVELY, PROVIDING FOR THE PAYMENT OF MINIMUM FRANCHISE FEE FOR ALL PUBLIC UTILITIES DOING BUSINESS IN THE CITY OF DAYTON, KENTUCKY, NOT NOW COVERED BY A CURRENT FRANCHISE.

WHEREAS, certain public utilities operate their respective businesses within the corporate limits of the City of Dayton, Kentucky, without current valid franchises from the City of Dayton; and

WHEREAS, the Board of Council of the City of Dayton, Kentucky (“Board of Council”) has determined that all public utilities operating within the City of Dayton utilize public streets and rights of way for their operation and that such utilization is a valuable property right and benefits said utilities in that such utilities would otherwise be required to invest substantial capital in right of way costs and acquisition without the use of public streets and rights of way, and such use by utilities results in certain added burden and/or damages to public improvements thereon, so that a public purpose would be served by requiring all public utilities operating within the City to be covered by the terms of the franchise therein; and

WHEREAS, the Constitution of the Commonwealth of Kentucky, Section 162, 163, and 164 and Chapter 96 of the Kentucky Revised Statutes authorize municipal corporations to require public utilities operating within their boundaries to operate under franchise agreements and to grant utilities the right to use public properties on such conditions as seem proper, and further, KRS 82.082 authorizes the City to exercise such powers within its boundaries as are not in conflict with other state law.

BE IT ORDAINED BY THE CITY OF DAYTON, KENTUCKY, AS FOLLOWS:

SECTION I

CREATION OF FRANCHISE. The City of Dayton (“City”) hereby creates a franchise granting the right, privilege, and franchise for furnishing and to furnish to the City of Dayton, Kentucky, and to its citizens, residents, and industries, electricity and natural gas for heat, fuel, light and power purposes by one or more persons, companies, or corporations, or other entities capable and willing to provide such service by and through a non- exclusive franchise, and such franchisee shall be granted the right to go upon or under the streets, alleys, or other public ways or places of the City, to lay, maintain, operate and remove poles, electric lines, or other suitable structures and wires

or any other appurtenance necessary to transmit electrical current and to lay and maintain mains and other suitable structures or any other appurtenance necessary for the providing of natural gas, subject to limitations by state and local law, and the franchise agreement so entered. This franchise, granted herein by the City, shall not be exclusive and the City reserves the right to grant a similar franchise to any other person or entity at any time. Upon application by franchisee to the Board of Council, any franchise granted hereunder may be extended to newly annexed territory upon the same terms and conditions herein, subject to approval of the state regulatory authorities if applicable.

SECTION II

TERM OF FRANCHISE. The franchise herein, pursuant to Kentucky Constitution §164, shall be for a minimum term of five (5) years and a maximum term of twenty (20) years, beginning on January 1, 2025, and ending on December 31, 2044.

SECTION III

OPERATION AND MAINTENANCE. In the maintenance and operation of its transportation and distribution system in the streets, alleys and other public places and in the course of any new construction or addition to its facility, franchisee shall proceed so as to cause the least possible inconvenience to the general public. Franchisee shall be subject to all state and county laws, rules and regulations Franchisee also shall comply with all ordinances and regulations of City, including, but not limited to, the City's Public Right-of-Way Ordinance, § 96.50 *et seq.* of the City Code of Ordinances ("Code") and its Historic Preservation Ordinance, § 156.01 *et seq.* of the Code, and any regulations adopted in connection with these ordinances, except to the extent such regulations conflict with Kentucky Revised Statutes Chapter 278 and the rules and regulations promulgated by the Kentucky Public Service Commission.

SECTION IV

FRANCHISE REQUIREMENTS. In addition to any other franchise requirements in this ordinance or made or adopted herein as provided, the following requirements shall apply to any franchise granted hereunder.

a) Franchise fee – in consideration of the granting and exercise of a franchise herein, and in further consideration of the grant to the franchisee the right to make use of public streets, alleys, or other public ways in the City, since such public properties are valuable properties acquired and maintained at great expense to the taxpayers of the City, and the grant to franchisee of the right to use same is a valuable property right without which the franchisee would be required to invest substantial capital in right-of-way costs and acquisitions, franchisee shall pay to the City during the entire life of the franchise a sum equal to three and one-half percent (3½%) annually of the franchisee's gross service revenues, for sales generated within the corporate limits. Franchisee shall pay such sum monthly, on the 15th day after the end of each month and shall furnish to the City a certified copy by a public account of its gross revenues received.

b) Any franchise payments to the City by franchisee shall not be in lieu of any occupational, income, license, or property tax, or similar levy, assessment, fee, license or charge which would otherwise apply to be payable by franchisee.

c) Franchisee shall file with the City Clerk of the City of Dayton, Kentucky, and shall thereafter during the entire term of this franchise, maintain in full force and effect, a corporate surety bond or other adequate surety agreement in the and kind specified in this ordinance and conditioned that in the even franchisee shall fail to comply with any one or more of the provisions of the franchise, then there shall be recoverable, jointly and severally, from the principal and surety, any damages or costs suffered or incurred by the City or by any customer of franchisee herein, including attorneys' fees and costs of any action, or proceedings, and including the full amount of any compensation, indemnification, cost of removal of any property, or other costs which may be incurred to the principal amount of such bond; and said condition shall be a continuing obligation during the entire term of this franchise, and thereafter, until franchisee shall have satisfied in full any and all obligations of the City and any of its customers hereunder, or other person or entity, which arise out of or pertaining to this franchise. Neither the provisions of this section, nor any bond accepted by the City pursuant hereto, nor any damages recovered by the City thereunder shall be construed to excuse faithful performance by the franchisee or limit the liability of the franchisee under any franchise issued pursuant to this ordinance. Provided, however, that pursuant to the provisions of KRS 96.020(2), this Section 3.2 shall not apply to a person already owning a plant and equipment sufficient to render the service required under the franchise hereby established.

d) Upon acceptance of such franchise, franchisee shall file with the City Clerk of the City of Dayton, Kentucky, and shall thereafter during the entire term of such franchise, maintain in full force and effect a single limit comprehensive liability policy of insurance with limit comprehensive liability policy of insurance with limits of not less than Two Million Dollars (\$2,000,000) each occurrence and Four Million Dollars (\$4,000,000) aggregate, and which shall insure franchisee, and shall provide primary coverage for the City, its officers, boards, commissions, agents and employees against liability for loss or damage for personal injury, death, and property damage occasioned by any activity or operation of franchisee under such franchise and which shall contain and include a standard cross-liability endorsement thereto. City shall be a named insured on any such policy. Provided, however, that this requirement may be waived by the Mayor or the designee thereof upon the reasonable satisfaction thereof with the net worth of the Franchisee.

e) Franchisee shall indemnify and hold harmless, the City of Dayton, Kentucky, its officers, boards, commissions, agents, and employees, against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages, costs or liabilities (including costs or liabilities of the City with respect to its employees), of every kind and nature whatsoever, including, but not limited to, damages for injury or death or damage to persons or property, and regardless of the merit of any of the same, against all liability to others, and against any loss, costs and expenses resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to actions of franchisee in the exercise or the enjoyment of any privilege hereunder by franchisee, or the granting thereof by the City.

f) Defense of Litigation. Franchisee shall, at its sole risk and expense, upon demand of the City made by and through the City Attorney, Alex Edmondson, Esq., or his successor, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the City, its officers, boards, commissions, agents, or

employees, and arising out of or pertaining to action of franchisee in the exercise or the enjoyment of such franchise or the granting thereof by the City.

Franchisee shall pay, and satisfy, and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made, or issued against franchisee, the City, its officers, boards, commissions, agents or employees in any of these premises, and such indemnity shall exist and continue without reference to the limitation by the amount of any bond, policy or insurance, deposit, undertaking, or other assurance required hereunder, or otherwise; provided that neither franchisee nor city shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit or other proceeding, without first obtaining the written consent of the other.

g) Franchisee shall abide by all provisions of the franchise agreement, and shall further agree that it will not, at any future time, set up as against the City the claim that the provisions of the franchise agreement are unreasonable, arbitrary, or void.

SECTION V

The purchase or purchasers of the franchise or franchises created hereunder shall provide the highest and best service, equipment, and repairs/replacements in accordance with accepted standards of the industry and shall maintain a convenient place to be open at reasonable hours for the purposes of paying bills and transacting business with the public, and further, shall keep and maintain such personnel as are reasonable necessary to provide the service so franchised hereby and to respond to customer complaints and to correct defective service.

SECTION VI

The purchaser or purchasers of any franchise created hereby shall have the right to break, take up, and remove such portion or part of any pavement to make such excavation in the streets and public ways of the City as may be deemed necessary to provide the service so franchised by this ordinance; provided, however, that any such work first be properly approved pursuant to the Code of Ordinances of the City of Dayton, including, but not limited to, § 96.50 *et seq.* and § 156.01 *et seq.* of the Code and any subsequent amendments thereto, and further provided that any such work or project so commenced by franchisee hereunder be promptly and diligently prosecuted to completion and upon such completion the streets, alleys, sidewalks, and public ways of the City shall exist in as good condition and repair, as before such work was commenced, pursuant to the Code or Ordinances of the City of Dayton, or as they may be hereafter amended and/or the franchise agreement. Further, the franchisee shall, upon request by the City, move and adjust any of its facilities or properties as shall be located on City property on right-of-way at its own expense, during construction or reconstruction of the improvements on such property right-of-way, and such movement or adjustment shall be accomplished within thirty (30) days after request by the City, unless franchisee can justify to the City additional time beyond this period is required to complete this work. In the event of noncompliance with the foregoing, the franchisee shall be liable to the City or the contractor, as the case may be, for damages for delay in construction occasioned thereby.

SECTION VII

The consideration paid by franchisee hereunder shall be the full and complete consideration for the franchise, privilege, and right granted by the City of Dayton, and shall be expressly in lieu of

any street or alley rental or of any charge for the use or occupancy of said streets, alleys, or public places in the City.

SECTION VIII

It shall be the duty of the City Administrator Jay Fossett or his successor as soon as practical after the passage of this ordinance to offer for sale at public auction the franchise and privilege involved herein. Bids for said franchise shall be due on December 13, 2024, and said franchise shall be sold to the best available bidder to be effective on the 1st day of January 2025. The City Clerk shall give notice by advertising pursuant to KRS Chapter 424 for request for bids and the time for receipt of same. Any utility subject to the terms and provisions of this ordinance may provide for in its bid any special or extraordinary matters or circumstances which relate or apply to this particular business; all subject, however to the right of rejection of any such bid by the City of Dayton.

After the time set for the deadline for receipt of bids hereunder, the City Administrator shall report and submit to the Board of Council at the time of its next regular meeting the bids and proposals for its approval. The Board of Council reserves the right for and on behalf of the City to reject any and all bids for said franchises and privileges, and the Board of Council may direct by resolution or ordinance said franchise or franchises to be again offered for sale from time to time until a satisfactory bid or bids shall be received and approved. Each such bid shall be accompanied by a deposit and each bidder shall post bond in accordance with the provisions of KRS 96.020; provided, however, that such deposit and bond need not be made by any bidder which owns and operates within the corporate limits of the City, the plant and equipment sufficient to render the service or services required by this ordinance.

SECTION IX

Any franchisee hereunder shall furnish to the City written notice by certified mail of the filing of any application with the Public Service Commission of Kentucky for an increase in rates and charges for a certificate of public convenience and necessity for capital investment, which notice shall be given concurrently with such filing. The City shall be given access, upon request, to all records of the franchisee related to such application.

SECTION X

In the event that no bids are received for the franchises hereunder, or in the event that the City does not accept any bids received hereunder, each and every public utility engaged in operating its respective business within the corporate limits of the City of Dayton which does not hold a valid current franchise from the City of Dayton to operate within the corporate limits shall have imposed upon it the terms, conditions, and payment of franchise fees set out hereunder, for the right, power and privilege of engaging and operating its respective business within the corporate limits and the right, power and privilege of using the streets, alleys, and other public ways or places in the City for and on behalf of the operation of its business.

SECTION XI

Any utility, agency, or other entity providing services herein contemplated which is owned and operated by the City or a subordinate agency thereof is excluded from the terms and provisions hereof.

SECTION XII

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION XIII

That this ordinance shall be signed by the Mayor, attested by the City Clerk, recorded, published and effective upon publication.

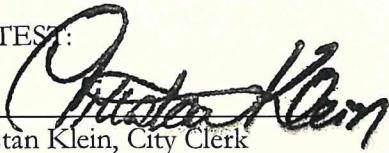
PASSED by the Board of Council of the City of Dayton, Campbell County, Kentucky, assembled in regular session.

First Reading: September 10, 2024
Second Reading: *October 8, 2024*



Mayor Ben Baker

ATTEST:

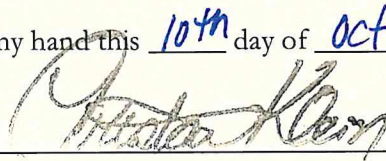


Tristan Klein, City Clerk

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Clerk/Treasurer of the City Council of Dayton, Kentucky (the "City"), and as such I further certify that the foregoing Ordinance is a true, correct, and complete copy of the Ordinance duly adopted by the City Council of the City after two readings on the dates referenced above, and has been signed by the Mayor and is now in full force and effect, all as appears from the official records of the City in my possession and under my control.

IN WITNESS WHEREOF, I have hereunder set my hand this 10th day of October 2024.



Tristan Klein
City Clerk/Treasurer