

COMMISSIONERS ORDINANCE O-2020-004

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY AMENDING ORDINANCE O-2019-008, SECTION III, CONCERNING CREATING AND PERMITTING NON-EXCLUSIVE FRANCHISE AGREEMENTS FOR THE USE OF CITY OWNED PROPERTY, STREETS AND RIGHTS-OF-WAY FOR THE INSTALLATION AND OPERATION OF CELLULAR AND WIRELESS COMMUNICATION SYSTEMS AND SERVICES.

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

SECTION I

TERMS OF FRANCHISE

The terms and conditions of the award of a non-exclusive franchise are hereby established as follows:

- a. Bidding Requirement: Pursuant to Section 164 of the Kentucky Constitution, before the granting of any such non-exclusive franchise, the City shall first, after due advertisement, receive bids therefore publicly, and award such non-exclusive franchise to the highest and best bidder, however the City retains its right to reject any and all such bids.
- b. Certificate Requirement: Pursuant to KRS 278.020, all bidders must first obtain a Certificate of Public Convenience and Necessity (CPCN) from the Kentucky Public Service Commission as a prerequisite to being able to tender a bid for the non-exclusive franchise and submit the same therewith.
- c. Franchise Agreement: Upon the award of any non-exclusive franchise, the City and Franchisee shall enter into a written NEFA setting forth the terms and conditions thereof and shall set forth the rights and privileges of the Franchisee,

which shall be approved and executed upon Order of the Board of Commissioners of the City.

- d. Non-Exclusive: Any franchise hereby established shall not be an exclusive franchise and shall be non-exclusive in nature, with the City reserving the right to grant such franchises to other persons or entities in accordance herewith and with applicable law.
- e. Area: Any NEFA entered into shall be for the use of those portions of the City owned property, streets, and rights-of-way necessarily utilized in order to carry out the purposes thereof.
- f. Term: The term of any NEFA entered into shall not exceed twenty (20) years in duration.
- g. Application Fee: The Franchisee shall be required to submit the appropriate application with the City and pay the requisite filing fee associated therewith. Such filing shall act as the bid submission. Upon approval by the City, a permit shall be issued for installation of the Franchisee's system(s).
- gh. Franchise Fee: In the event the City revokes participation in the State's Telecommuiciation Tax Distribution Fund, with proper notification provided, t The Franchisee shall then be required to pay, on an annual basis, within thirty (30) days of the end of the City's fiscal year, a local franchise fee of three percent (3%) of the gross receipts from the sale of services granted by the NEFA. The franchise fee

shall be exclusive of any other fees, taxes or charges or which the Franchisee may otherwise be responsible.

h_i. Rights-of-Way Usage Fee: The City hereby establishes a Right-of-Way Usage Fee (ROWUF) which the City is authorized to impose pursuant to the decision rendered in *Kentucky CATV Assn., Inc. V. City of Florence, Et. Al.* (520 S.W.3d 355, Ky., 2017) for incorporation into any NEFA, for which the Franchisee will be assessed, as follows:

- (1) Two Dollars (\$2.00), per linear foot of cable, fiber, conduit or wire occupying or upon any City owned property, streets, or Rights-of-Way;
- (2) Fire Hundred Dollars (\$500.00) for each City pole, tower or other facility exceeding fifty (50) feet in height and occupying or upon any City owned property, streets, or Rights-of-Way; and,
- (3) Five dollars (\$5.00), per each square foot of space in any City owned property, streets, or Rights-of-Way that the Franchisee facilities and related equipment occupies other than those set forth in (1) and (2) set forth above.

In the event the ROWUF shall be eliminated, discontinued, preempted, becomes invalid or otherwise declared null and void, the City shall determine, in good faith and in lieu thereof, a fair and reasonable compensation payable to the City from the Franchisee for use of its property, streets, or Rights-of-Way in order to provide cellular and wireless communications systems and services.

The ROWUF shall not be deemed as a tax and shall be paid in addition to any and all taxes or other fees or charges that the Franchisee shall be required to pay.

SECTION IV

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

PASSED: First reading March 9, 2020
PASSED: Second reading March 10, 2020

ATTEST:

Jerry R. Peluso, Mayor

—

Amy B. Able, City Clerk

PUBLISHED: Online on the City website, www.newportky.gov, with URL reference published in the Campbell County Recorder the 19th day of March, 2020 as statutorily allowable under Section 143 of HB 487 approved in 2018 by the Kentucky Legislature and became law on April 27, 2018.