

**ORDINANCE NO. 1008**

**AN ORDINANCE OF THE CITY OF EDWARDSVILLE, KANSAS AMENDING CHAPTER 15 PUBLIC WAYS AND PROPERTY OF THE CODE OF ORDANINANCE OF THE CITY OF EDWARDSVILLE, KANSAS AND REPEALING ALL OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THE PROVISIONS OF THIS ORDINANCE**

**WHEREAS**, K.S.A. 12-2001 allows the governing body of any city to permit any person, firm, or corporation to perform work utilizing certain public ways and properties and to assess fees associated with that utilization; and

**WHEREAS**, the City of Edwardsville, Kansas finds it necessary to allow entities to perform work within certain public ways and properties and desires to clarify the franchise process and City requirements; and

**WHEREAS**, it is appropriate for the City to assess reasonable fees to recover the costs associated with the review and approval of a contract franchise provided that such fee reimburses the City for its reasonable costs for this activity;

**THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDWARDSVILLE, KANSAS:**

**Section 1.** Chapter 15 Public Ways and Property of the Code of Ordinance of the City of Edwardsville, Kansas shall be amended to include the following sections:

**Article 15.06 – Master Franchise Code**

**Sec. 15.06.001 - Definitions**

For the purposes of this Chapter, the following words and phrases shall have the meanings given herein:

A. *City* means the City of Edwardsville, Kansas. Any reference to “within the City” shall mean within the corporate city limits of the City of Edwardsville, Kansas.

B. *Entity* means any individual person, governmental entity, business, corporation, partnership, firm, limited liability corporation, limited liability partnership, unincorporated association, joint venture or trust and shall include all forms of business enterprise not specifically listed herein.

C. *Facilities* means lines, pipes, mains, laterals, wires, cables, conduit, ducts, poles, towers, cabinets, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, wireless communications facilities, together with all necessary appurtenances or other equipment thereto, or any part thereof, for the purpose of providing or otherwise facilitating any Service.

D. *Franchise* means the grant, right, privilege and franchise by the City to provide, distribute, transport or sell a Service within the City and/or to install, construct, maintain, extend

or operate Facilities along, across, upon, under or within the Right-of-way. The grant, right, privilege and franchise shall be in accordance with the provisions of K.S.A. 12-2001 et seq. (as may be amended) or any other applicable state law, the City's Home Rule power, and/or any applicable City codes.

E. Franchisee or Grantee means any Entity that has a Franchise granted by the City pursuant to this Chapter, K.S.A. 12-2001 et seq., as amended, any other applicable state law, and/or the City's Home Rule power.

F. Franchise Fee means consideration paid in the form of a charge upon a Franchisee as prescribed in the ordinance granting the Franchise. Any such Franchisee Fee shall be subject to any applicable provisions of federal or state law.

G. Reseller means a provider of Service within the City whereby the provider purchases and resells the Service of a duly authorized Franchisee, but only where the duly authorized Franchisee is already paying fees for the resold Service under its Franchise with the City. (For example, the resale of local exchange service as contemplated by K.S.A. 12-2001(n).)

H. Right-of-way means the area on, below or above present and future streets, alleys, bridges, parkways, or highways in which the City has a dedicated or acquired right-of-way interest in the real property. The "Right-of-way" shall not include property owned by the City outside of the Right-of-way.

I. Service means any utility, commodity or similar service provided, distributed, transported or sold to an Entity by means of a delivery or distribution system that is comprised of Facilities within the City, including without limitation, telecommunication, cable, broadband, Internet, Open Video Systems, wireless services, alarm systems, steam, electric, water, telegraph, data transmission, natural gas, Other Energy, or any other similar service.

#### **Sec. 15.06.002 – Franchise Requirement**

No Entity shall provide, distribute, transport or sell a Service within the City or shall install, construct, maintain, extend or operate Facilities along, across, upon, under or within the Right-of-way without a Franchise authorizing the same, unless applicable federal or state law prohibits City enforcement of such requirement. This franchise requirement includes:

A. Entities with Facilities within the City in order to provide, distribute, transport or sell Service within the City;

B. Entities with Facilities within the City's Right-of-way in order to provide, distribute, transport or sell Service outside, but not within the City; and

C. Entities without their own Facilities within the City that lease or otherwise use the Facilities of other Entities in order to provide, distribute, transport or sell Service within the City.

This requirement includes Entities only possessing or having an interest in Facilities in the Right-of-way that are used by, may be used by or are intended for use by another Entity, in whole or in part, to provide a Service for or without a fee, regardless of whether the actual facility owner

provides any Services.

Provided, however, this franchise requirement shall not include a Reseller, or include a governmental entity that has entered into an agreement with the City pursuant to K.S.A. 12-2901 et seq. regarding the use and occupancy of the Right-of-way.

**Sec. 15.06.003 – Preservation of Police Power Authority and Applicability of Regulations**

Any rights granted pursuant to this Chapter or pursuant to any Franchise are subject to the authority of the City to adopt and enforce ordinances and regulations necessary to the health safety and welfare of the public. All Entities subject to this Chapter shall also be subject to and comply with all applicable federal and state laws, statutes and regulations, and all applicable rules, regulations, policies and ordinances enacted by the City, including without limitation, the City's Ordinances including the City's Zoning and Subdivision Ordinances. Provided, nothing in this Chapter shall be deemed to waive a right, if any, that an Entity might have to seek judicial or regulatory review as provided by law.

**Sec. 15.06.004 – Nature of Rights Granted by Any Franchise**

Franchises shall not convey title, equitable or legal, in the Right-of-way or any other public property, but shall give only the right to occupy the Right-of-way for the purposes and period stated within the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse a Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. Any Franchise granted by the City shall be nonexclusive.

**Sec. 15.06.005 – Franchise Applications and Renewals**

A. Applications. All applications for a Franchise shall be on forms provided or approved by the City. Any application fee shall be paid prior to processing by the City, unless otherwise agreed to by the City. Upon receipt of a completed application and any applicable fee, the designated city official shall prepare a report and make a recommendation respecting such application to the Governing Body. Each Service subject to a Franchise shall require a separate application.

B. Application Fee. A non-refundable application fee shall be paid at the time of the application in the amount as provided for in the fee schedule found in the appendix of this code. As part of said application fee the City may include reimbursement for all reasonable costs incurred by the City in drafting, negotiating, adopting, and publishing the Franchise. Provided, nothing herein shall prevent the City from having any publication or other reasonable costs billed directly to the applicant. Said fee and costs shall not be considered or credited against the collection of applicable Franchise Fees.

C. Franchise Renewal. Franchise renewals shall be in accordance with applicable law. The City and any Franchisee, by mutual consent or as otherwise provided in such Franchisee's Franchise, may enter into renewal negotiations. The City may require such Franchisee to update

any application information and, subject to Kansas Statute or any provisions in such Franchisee's Franchise, submit an application fee.

**Sec. 15.06.006 – Failure to Enforce**

The failure of the City to insist upon the strict adherence to the requirements of this Chapter or of any Franchise shall not be construed as a waiver or relinquishment for the future of the rights of the City to enforce this Chapter or any Franchise or any term or provision thereof.

**Sec. 15.06.007 – Violations**

It shall be unlawful for any Entity to provide, distribute, transport or sell a Service within the City or install, construct, maintain, extend or operate Facilities along, across, upon, under or within the Right-of-way without first complying with this Chapter. Any Entity violating this Chapter shall be subject to a fine in accordance to Section 1.01.009 of the Code of Ordinances of the City of Edwardsville, Kansas. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Chapter to fullest extent allowed by law, including, but not limited to, the payment of a Franchise Fee or the equivalent thereof, and indemnification of the City.

**Section 2.** All other ordinance or parts of ordinances in conflict with the provisions of this ordinance shall be and are hereby repealed

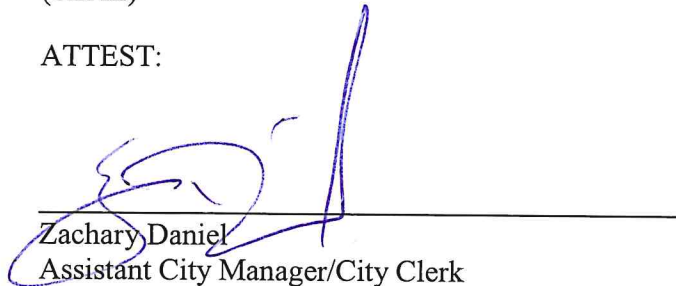
**Section 3.** This ordinance shall take effect and be in force from and after is passage and publication as required by law.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF EDWARDSVILLE, KANSAS ON THIS 22<sup>ND</sup> DAY OF OCTOBER, 2018**

  
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John McTaggart  
Mayor

(SEAL)

ATTEST:

  
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Zachary Daniel  
Assistant City Manager/City Clerk

