

City Hall
Fayette, Alabama
September 8, 2015

A regular meeting of the City Council of the City of Fayette met at 5:00 o'clock, p.m. on September 8, 2015, in the Council Chambers of the City Hall.

Upon roll call the following were found to be present: Mayor Ray Nelson, Council members Linda McCraw, Mike Hardin, Jason Cowart, Cedric Wilson and David Brand. Also present were City Clerk Dawn Clapp, Police Chief Danny Jenkins, Fire Chief Tony Ellis, City Attorney Dale Lawrence and City Engineer Dewayne Roby.

The opening prayer was given by Mr. Brannen Perry.

Mayor Nelson announced a quorum was present and the meeting was open for the transaction of business.

NEW LIBRARIAN INTRODUCED

Ms. Joy Griswold introduced Ms. Jessica Crowe as the new Library Director. Ms. Crowe is originally from Fayette and graduated from Fayette County High School. Before coming to Fayette, she was a librarian at a community college in North Carolina.

46TH ANNUAL ARTS FESTIVAL

Ms. Anne Uhlman announced the 46th Annual Arts Festival will take place on September 12th at Guthrie Smith Park. It is the longest running festival in the State.

APPROVAL OF MINUTES

Councilmember Brand moved the minutes of the meeting held on August 25, 2015, be approved. Upon the motion being seconded by Councilmember Cowart, the same was unanimously approved.

PARADE PERMIT

Mayor Nelson presented to the Council a request for parade permit submitted by Mr. Teddy Jacks for a public preaching and singing event to be held on the Courthouse steps on October 17, 2015. Councilmember Cowart moved the permit be granted. Upon the motion being seconded by Councilmember McCraw, the same was unanimously approved.

FIRE DEPARTMENT REPORT

Fire Chief Tony Ellis presented the fire report for the month of August 2015. The Fire Department received 10 calls. One was a structural fire.

POLICE DEPARTMENT REPORT

Police Chief Danny Jenkins presented the police report for the month of August 2015. The report was as follows: 34 incidents investigated; 10 accidents; 68 traffic citations; and 23 arrests.

Chief Jenkins reported he was posting an officer's position for the Police Department.

ORDINANCE 2015-03

Mayor Nelson presented Ordinance 2015-03 to the Council for their consideration. Ordinance 2015-03 is as follows:

ORDINANCE NO. 2015-03

AN ORDINANCE GRANTING A FRANCHISE TO CENTURYTEL OF ALABAMA, LLC D/B/A CENTURYLINK ON BEHALF OF ITSELF AND ITS OPERATING AFFILIATES ("CENTURLINK") TO OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM ("THE SYSTEM") IN THE CITY OF FAYETTE, ALABAMA ("THE CITY").

THE CITY hereby ordains that it is in the public interest to grant CenturyLink a Franchise to operate the System pursuant to the terms and conditions contained herein.

SECTION 1. Grant of Franchise. The City hereby grants to CenturyLink the right, privilege and authority to construct, install, maintain, operate, upgrade, replace, renovate, adjust, protect, support, raise, lower, disconnect, remove and relocate its cables, poles, pedestals, boxes, wires, conduits, conductors, pipes and related appurtenances (“Facilities”) for its System in, under, along, over and across the present and future streets, alleys and public ways of the City (“Public Ways”), for the purpose of providing telecommunication services to the City’s inhabitants and businesses.

SECTION 2. Acceptance by CenturyLink. Within sixty (60) days after the passage of this Ordinance by the City, CenturyLink shall file a signed copy thereof with the City Recorder, otherwise the Ordinance and the rights granted herein shall be null and void.

SECTION 3. Term. The Term of this Franchise is ten (10) years commencing on the date of acceptance by CenturyLink as set forth in Section 2, above.

SECTION 4. Franchise Fee. Within sixty (60) days after the date of CenturyLink’s Acceptance of this Ordinance and until its expiration, CenturyLink will pay the City three percent (3%) of CenturyLink’s local exchange access service Gross Revenue (as defined in Appendix A hereto). Payment shall be made quarterly within sixty (60) days after the end of each quarter during the Term of this Franchise.

SECTION 5. Records Inspection. CenturyLink shall make available to the City, upon reasonable advance written notice of no less than sixty (60) days, such information pertinent only to enforcing the terms of this Ordinance in such form and at such times as CenturyLink can reasonably make available. Subject to applicable laws, any information that is provided to the City and/or that the City reviews *in camera* is confidential and proprietary and shall not be disclosed or used for any purpose other than verifying compliance with the terms of this Ordinance. Any such information provided to the City shall be immediately returned to CenturyLink following review. The City will not make copies of such information.

SECTION 6. Non-Exclusive Franchise. The right to use and occupy the Public Ways of the City shall be nonexclusive, and the City reserves the right to use the Public Ways for itself or any other entity. The City’s use, however, shall not unreasonably interfere with CenturyLink’s Facilities.

SECTION 7. City Regulatory Authority. The City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties consistent with applicable federal and state law.

SECTION 8. Indemnification. The City shall not be liable for any property damage or loss or injury to or death of any person that occurs in the construction, operation or maintenance by CenturyLink of its Facilities. CenturyLink shall indemnify, defend and hold the City harmless from and against third party claims, demand, liens and all liability or damage or whatsoever kind on account of CenturyLink’s use of the Public Ways. The City shall: (a) give prompt written notice to CenturyLink of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) permit CenturyLink to assume the defense of such claim, demand, or lien. CenturyLink shall not be subject to liability for any settlement made without its consent. Notwithstanding the other provisions contained herein, CenturyLink shall in no event be required to indemnify the City for any claims, demands, or liens arising from the negligence or wrongful actions or inactions of the City, its officials, boards, commissions, agents, contractors, and/or employees.

SECTION 9. Insurance Requirements. CenturyLink will maintain in full force and effect for the Term of the Franchise, at CenturyLink’s expense, a comprehensive liability insurance policy written by a company authorized to do business in the State of Alabama, or will provide self-insurance reasonably satisfactory to the City, protecting it against liability for loss, personal injury and property damage occasioned by the operation of the System by CenturyLink. Such insurance will be in an amount not less than \$1,000,000.00. CenturyLink will also maintain Worker’s Compensation coverage throughout the term of this Franchise as required by law. The City may review the status of CenturyLink’s insurance at www.centurylink.com/moi.

SECTION 10. Annexation. When any territory is approved for annexation to the City, the City shall within ten (10) business days provide by certified mail to CenturyLink: (a) each site address to be annexed as recorded on City assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City’s ordinance approving the proposed annexation.

SECTION 11. Plan, Design, Construction and Installation of CenturyLink’s Facilities.

11.1 All Facilities under authority of this Ordinance shall be used, constructed and maintained in accordance with applicable law.

11.2 CenturyLink shall, prior to commencing new construction or major reconstruction work in Public Ways or other public places, apply for any required permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed. CenturyLink will abide by all applicable ordinances and reasonable rules, regulations and requirements of the City consistent with applicable law, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, CenturyLink shall not be obligated to obtain a permit to perform emergency repairs.

11.3 To the extent practical and consistent with any permit issued by the City, all Facilities shall be located so as to cause minimum interference with the Public ways and shall be constructed, installed, maintained, renovated or replaced in accordance with applicable and lawful rules, ordinances, and regulation of the City.

11.4 If, during the course of work on its Facilities, CenturyLink causes damage to or alters the Public Way or other public property, CenturyLink shall replace and restore such Public Way or public property at CenturyLink's expense to a condition reasonably comparable to the condition that existed immediately prior to such damage or alteration.

11.5 CenturyLink shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground facilities or replacing existing underground facilities, each party shall first notify the other of such work in accordance with applicable law, such as but not limited to, Alabama's excavation and demolition laws set forth in Alabama Code (1975) §37-15-1 *et seq.* In no event will the City be required to secure CenturyLink's permission or consent to operate or construct in the City's Public Ways. To the extent practicable under the circumstances, each party may allow the other party, at its own expense, to share the trench for laying its own facilities therein, provided that such action will not unreasonably interfere with the first party's use of the trench for unreasonably delay project completion.

11.6 Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing, or relocating its sewers, streets, water mains, sidewalks, or other public property. However, before commencing any work within a Public Way that may affect CenturyLink's Facilities, the City shall give written notice to CenturyLink in accordance with applicable law, such as but not limited to, Alabama's excavation and demolition laws set forth in Alabama Code (1975) §37-15-1 *et seq.* The two parties shall work together to ensure that all of their facilities are protected and the project is completed.

11.7 CenturyLink shall not attach to, or otherwise use or commit to use, any pole owned by City until a separate pole attachment agreement has been executed by the parties.

SECTION 12. Relocation of Facilities.

12.1 Relocation for the City. CenturyLink shall, upon receipt of advance written notice of not less than one hundred twenty (120 days), protect, adjust, support, raise, lower, temporarily disconnect, relocate or remove any CenturyLink property located in a Public Way when required by the City consistent with its police powers. CenturyLink shall be responsible for any costs associated with these obligations to the same extent as other users of the respective Public Way and as otherwise required by applicable state or federal law.

12.2 Relocation for a Third Party. CenturyLink shall, at the request of any person holding a lawful permit issued by the City, protect, adjust, support, raise, lower, temporarily disconnect, relocate or remove any CenturyLink property located in a Public Way, provided that the cost of such action is borne by the person requesting it and CenturyLink is given reasonable advance written notice. In such situation, CenturyLink may also require advance payment. For purposes of this subsection 12.2, "reasonable advance written notice" shall mean no less than thirty (30) days for a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

12.3 Alternatives to Relocation. CenturyLink may, after receipt of written notice requesting a relocation of Facilities, submit to the City written alternatives to such relocation. Such alternatives shall include the use and operation of temporary transmitting facilities in adjacent Public Ways. The City shall promptly evaluate such alternatives and advise CenturyLink in writing if one or more of the alternatives are suitable. If requested by the City, CenturyLink shall promptly submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by CenturyLink full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, CenturyLink shall relocate the components of the System as otherwise provided herein. Notwithstanding the foregoing, CenturyLink shall in all cases have the right to abandon the Facilities.

SECTION 13. Vegetation Management. CenturyLink shall have the authority to trim trees and other natural growth in the Public Ways in order to access and maintain the Facilities in compliance with applicable law and industry standards. This grant shall in no way impose a duty on CenturyLink; instead, this grant gives permission to CenturyLink should CenturyLink elect to conduct such activities from time-to-time in order to access and maintain its Facilities.

SECTION 14. Renewal. At least one hundred twenty (120) days prior to the expiration of this Franchise, CenturyLink and the City shall either agree to extend the Term or use best faith efforts to negotiate a replacement Franchise agreement.

SECTION 15. Revocation of Franchise for Noncompliance.

15.1 In the event that the City believes that CenturyLink has not complied with the terms of the Franchise, the City shall informally discuss the matter with CenturyLink. If these discussions do not lead to resolution of the problem, the City shall notify CenturyLink in writing of the exact nature of the alleged noncompliance.

15.2 CenturyLink shall have thirty (30) days from receipt of the written notice described in subsection 15.1 to either respond to the City, contesting the assertion of noncompliance, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the City of the steps being taken and the projected date that they will be completed.

15.3 In the event that CenturyLink does not comply with subsection 15.2, above, the City shall schedule a public hearing to address the asserted noncompliance issue. The City shall provide CenturyLink at least ten (10) days prior written notice of and the opportunity to be heard at the hearing.

15.4 Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 15.3, determines that CenturyLink is noncompliant with this Ordinance, the City may:

- A. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or other equitable relief; or
- C. In the case of substantial noncompliance with a material provision of the Ordinance, seek to revoke the Franchise in accordance with subsection 15.5.

15.5 Should the City seek to revoke the Franchise after following the procedures set forth above, the City shall give written notice to CenturyLink. CenturyLink shall have ninety (90) days from receipt of such notice to object in writing and state its reason(s) for such objection. Thereafter, the City may seek revocation of the Franchise at a public hearing. The City shall cause to be served upon CenturyLink, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, the City shall give CenturyLink an opportunity to state its position on the matter, after which the City shall determine whether or not the Franchise shall be revoked. CenturyLink may appeal the City's determination to an appropriate court, which shall have the power to review the decision of the City de novo. Such appeal must be taken within sixty (60) days of the issuance of the City's determination. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce its rights under this Ordinance in lieu of revocation.

15.6 Notwithstanding the foregoing provisions in this Section 15, CenturyLink does not waive any of its rights under applicable law.

SECTION 16. No Waiver of Rights. Neither the City nor CenturyLink shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with State or Federal law, as may be amended.

SECTION 17. Transfer of Franchise. CenturyLink's right, title or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without notice to the City, except when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with CenturyLink, or for transfers in trust, by mortgage, by other hypothecation, or by assignment of any rights, title or interest of CenturyLink in the Franchise or Facilities in order to secure indebtedness.

SECTION 18. Amendment. Amendments to the terms and conditions contained herein shall be mutually agreed upon by the City and CenturyLink and formally adopted by the City Council as an ordinance amendment.

SECTION 19. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) business days after such notice is deposited in the United States Mail, postage prepaid, certified, and addressed to the Parties as set forth below:

The City:
City of Fayette
Attn: Dawn Clapp, City Clerk
203 Temple Ave. N.
Fayette, Alabama 35555

CenturyLink:
Law Department
Franchise Rights-of-Way Attorney
1801 California St., 9th Floor
Denver, Colorado 80202

SECTION 20. Publication. In accordance with Alabama Statute, the City shall be responsible for publication of this Ordinance, and any amendments thereof. CenturyLink shall be responsible for payment of all necessary and reasonable costs of publication of this Ordinance, and any amendments thereof.

SECTION 21. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority, including any state or federal regulatory authority having jurisdiction thereof, or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

CONSIDERED and APPROVED this 8th day of September, 2015.

CITY OF FAYETTE

By: _____
Ray Nelson, Mayor

ACCEPTED BY CENTURYLINK:
BY: _____

TITLE: _____

DATE: _____

APPENDIX A

**LISTING OF SERVICE CATEGORIES INCLUDED IN "GROSS REVENUE"
FOR CALCULATION OF FRANCHISE FEES**

- Business Local Access – including Flat Rate, Multiparty, and Extended Area Service
- Business Measured Usage Local Access Service
- Flat Usage Local Access Trunks
- Low Income Telephone Assistance Program Local Access
- Measured Rate Local Access Trunk Usage
- Message Rate Local Access Trunk Usage
- Public Access Line (PAL) Service
- Residential Local Access – including Flat Rate, Multiparty, and Extended Area Service
- Residential Measured Usage

THE FOLLOWING IS A NON-EXCLUSIVE LISTING OF CATEGORIES OF REVENUE NOT REPRESENTING THE RETAIL SALE OF LOCAL ACCESS SERVICES AND THEREFORE EXCLUDED FROM THE DEFINITION OF "GROSS REVENUES" AND, THEREFORE, ARE NOT INCLUDED IN THE CALCULATION OF ANY FEE DUE TO THE CITY

- Proceeds from the sale of bonds, mortgages, or other evidences of indebtedness, securities or stocks
- Bad debt write-offs and customer credits
- Revenue from directory advertising

Any amounts collected from customers that are to be remitted to a federal or state agency as part of a Universal Service Fund or other government program, including but not limited to support for the hearing impaired.

Any amounts collected for taxes, fees, or surcharges and paid to the federal, state or local governments

Revenues from internet access

Revenues from digital or other electronic content, such as computer software, music and video downloads

Revenues from equipment sales, rentals, installation and maintenance

Revenues from any carrier purchased for resale

Revenues from private line services not for switched local access service

Councilmember Cowart moved the Council give unanimous consent to consider Ordinance 2015-03. Upon the motion being seconded by Councilmember Wilson, the same was unanimously approved.

Councilmember Cowart moved the Council adopt Ordinance 2015-03. Upon the motion being seconded by Councilmember McCraw, the same was unanimously approved.

PROPOSED HOLIDAY SCHEDULE FOR 2015-2016

Mayor Nelson presented the proposed 2015-2016 holiday calendar to the Council for their consideration. It is as follows:

Columbus Day -- Monday, October 12, 2015
Veteran's Day -- Wednesday, November 11, 2015
Thanksgiving -- Thursday, November 26, 2015 and Friday, November 27, 2015
Christmas -- Thursday, December 24, 2015 and Friday, December 25, 2015
New Year's Eve -- Thursday, December 31, 2015
New Year's Day -- Friday, January 1, 2016
Martin Luther King/Robert E. Lee Day -- Monday, January 18, 2016
President's Day -- Monday, February 15, 2016
Good Friday -- Friday, March 25, 2016
Memorial Day -- Monday, May 30, 2016
Independence Day -- Monday, July 4, 2016
Labor Day -- Monday, September 5, 2016

Councilmember Wilson moved the Council adopt the proposed Holiday Schedule for 2015-2016. Upon being seconded by Councilmember Brand, the following vote was taken:

AYES: Mayor Nelson, Councilmembers Cowart, McCraw, Wilson and Brand
NAYS: Councilmember Hardin

Mayor Nelson stated the motion passed.

STANDARD & POOR'S RATING REVIEW

City Auditor Rick McCabe reported on Standard & Poor's review of the City's credit rating. He said Standard & Poor's rating service had affirmed its A+ rating on the City's previously issued general obligation debt. One of the reasons for the good rating is the City's strong reserves.

RESOLUTION 2015-10

Mayor Nelson presented Resolution 2015-10 to the Council for their consideration. Resolution 2015-10 is as follows:

RESOLUTION 2015-10
A RESOLUTION ALLOWING THE CITY TO ENTER INTO AN AGREEMENT WITH
THE ALABAMA DEPARTMENT OF TRANSPORTATION RELATING TO A
TRANSPORATION ALTERNATIVES PROJECT WITH PARTIAL FUNDING BY THE
FEDERAL HIGHWAY ADMINISTRATION

BE IT RESOLVED, by the City Council of the City of Fayette as follows:

1. That the City enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation relating to a Transportation Alternatives project with partial funding by the Federal Highway Administration which agreement is before this Council;

2. That the agreement be executed in the name of the City, for and on behalf of the City, by its Mayor.

3. That it be attested by the Clerk and the seal of the City affixed thereto.

BE IT FURTHER RESOVED, that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept on file by the City Council.

I, the undersigned qualified and acting City Clerk of the City of Fayette, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City Council named therein, at a regular meeting of such Council held on the 8th day of September, 2015, and that such resolution is on file in the City Clerk's Office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this 8th day of September, 2015.

Mayor

ATTEST:

City Clerk

Councilmember McCraw moved the Council adopt Resolution 2015-10. Upon the motion being seconded by Councilmember Hardin, the same was unanimously approved.

REPORT OF DOG LEASH COMMITTEE

Councilmember Cowart reported the Dog Leash Committee had recommended posting signs in the playground area requiring dogs to be on a leash.

APPROVAL OF FINANCIAL STATEMENT

Councilmember Cowart moved the City's financial statement be approved. Upon the motion being seconded by Councilmember Brand, the same was unanimously approved.

APPROVAL OF PARK & RECREATION FINANCIAL STATEMENT

Councilmember McCraw moved the Park & Recreation financial statement be approved. Upon the motion being seconded by Councilmember Cowart, the same was unanimously approved.

REPORT OF CITY CLERK

City Clerk Dawn Clapp reported for the month of August, the City received \$203,585.00 in sales tax, which was a decrease of \$16,716.00 compared to last year. Also, the City received \$8,922.00 in alcohol taxes for August which was an increase of \$2,376.00 over the previous year.

ADJOURNMENT

There being no further business to come before the Council, upon the motion to adjourn being made by Councilmember Wilson and seconded by Councilmember McCraw, the same was unanimously approved.

Mayor

Attest:

City Clerk