

ORDINANCE NO. 102
ESTABLISHING A FRANCHISE FEE TO BE CHARGED
CARROLL ELECTRIC COOPERATIVE CORPORATION
WITHIN THE CORPORATE LIMITS OF THE TOWN OF
AVOCA, ARKANSAS; DECLARING AN EMERGENCY;
AND FOR OTHER PURPOSES.

WHEREAS, Carroll Electric Cooperative Corporation ("Carroll Electric"), acting under legal authority, is now occupying the streets, highways, alleys, and other public ways of the Town of Avoca, Arkansas (the "Town"), and is now serving the Town and its inhabitants thereof with services and products; and

WHEREAS, the Town is entitled to receive a just and reasonable franchise fee from said company of the use of said streets, highways, alleys and other public ways; and

WHEREAS, Arkansas Code Annotated §14-200-101 authorizes the Town to act by ordinance or resolution to determine the quality and character of each kind of, and rates for, products or services to be furnished or rendered by any public utility within the Town and all other terms and conditions upon which the public utility may be permitted to occupy the streets, highways, or other public places within the Town; and the ordinance shall be deemed *prima facie* reasonable.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Avoca, Arkansas:

Section 1: That Carroll Electric, its successors and assigns, shall continue to operate its electric powers system and all business incidental to or connected with the conducting of business systems engaged in the sale of electric power and energy within the town limits of the Town as heretofore allocated to Carroll Electric by the Arkansas Public Service Commission. The plant, construction and appurtenances used incident to the giving of electrical power service and to the maintenance of an electrical power service business shall remain as now constructed; subject to such changes, as may be considered necessary by the Town, in the exercise of its inherent power and by Carroll Electric in the conduct of its business and by the Arkansas Public Service Commission in its regulatory power of public utilities. Carroll Electric shall continue to exercise its right to place, remove, construct, extend and maintain its said plant and appurtenances thereto, along, over, across, on, through, above and under all public streets, alleys, avenues, and the public grounds in places and certain areas heretofore allocated by the Arkansas Public Service Commission and within the corporate limits of the Town, as said corporate limits are now located or as may hereafter be located within the area assigned to it by the Arkansas Public Service Commission. The rights granted to Carroll Electric in this Section 1 with regard to the placement, removal, construction, extension and maintenance of its plants, facilities and

apparatus located or as may hereafter be located within the Town, shall be exercised in conformance with the ordinances, resolutions, rules and regulations of the Town.

Section 2: Carroll Electric shall pay the Town a franchise fee on its gross sales of electrical power to domestic, public and commercial consumers within the territory served by Carroll Electric within the corporate limits of the Town, as said limits now exist or may hereafter exist, as follows:

A. Commencing with the period of bills delivered after August 1, 2015, and ending July 31, 2017, at the rate of three and one-half percent (3.5%);

B. Commencing with the period of bills delivered after August 1, 2017, at the rate of four and one-quarter percent (4.25%);

C. The franchise fee payments shall continue year to year thereafter unless the Town or Carroll Electric shall terminate this agreement at the end of any year (July 31st), after first giving sixty (60) days advance notice of intention to terminate;

D. The franchise fee payments shall be made monthly. Carroll Electric shall have thirty (30) days from the end of each month to compute and make payments provided for herein; and

E. The Town reserves the right to request a review of Carroll Electric's computations and payments made to verify that the appropriate amount of franchise fees are being paid.

Section 3: Monthly payments herein required shall be in lieu of all other charges, license, fees, or imposition other than the usual general or special *ad valorem* taxes which may be imposed by the Town under authority conferred by law.

Section 4: This franchise shall take effect and continue and remain in force as provided in the Arkansas Code Annotated §14-200-103 as same may be amended from time to time.

Section 5: Carroll Electric, on the request of any person, shall remove or raise or lower its wires temporarily to permit the moving of houses, structures or other large items. The expense of such temporary removal, raising or lowering of wires shall be paid by the party or parties requesting same. Such costs and expenses shall be reasonable and in accordance with published schedules of costs and fees promulgated by Carroll Electric from time to time for such services.

Section 6: Permission is hereby granted to Carroll Electric to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the Town within the Town's

established rights-of-way to the extent necessary to prevent the branches from coming into contact with wires and cables of Carroll Electric.

Section 7: Upon written request of Town, Carroll Electric will, at its expense and in a timely manner, remove and/or relocate any plants, facilities and apparatus placed upon the Town's streets, alleys, sidewalks or other public places pursuant to the rights herein granted or heretofore granted by previous agreements of the parties, in order to facilitate the widening, expansion or improvement of Town streets, alleys, sidewalks or other public places.

Section 8: Nothing in this ordinance shall be construed to require or permit any electrical light or power wire attachment by or for the Town. If light or power attachments are desired by or for the Town, then a separate non-contingent agreement shall be a prerequisite to such attachment.

Section 9: Nothing herein contained shall be construed as giving to Carroll Electric any exclusive privileges, nor shall it affect any prior or existing rights of Carroll Electric to maintain an electrical power system within the Town.

Section 10: Emergency Clause. It is hereby determined by the Town Council of the Town that this franchise ordinance is necessary in order that the needs of the Town may be properly protected. Therefore, an emergency is declared to exist and this franchise, being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED this 21st day of July, 2015.

Jiane Bowen
JORDAN SULLIVAN, Mayor

Jiane Bowen, Acting Mayor

ATTEST:

Jay G. King
DIANE BOWEN, Town Recorder/Treasurer

Jay G. King, Alderman