

**CITY OF KENNESAW
GEORGIA**

ORDINANCE NO. 2020-07, 2020

ORDINANCE TO GRANT PERMISSION AND CONSENT TO COBB ELECTRIC MEMBERSHIP CORPORATION, ITS SUCCESSORS, LESSEES, AND ASSIGNS, TO OCCUPY THE STREETS AND PUBLIC PLACES OF THE CITY OF KENNESAW, GEORGIA, IN CONSTRUCTING, MAINTAINING, OPERATING AND EXTENDING POLES, LINES, CABLES, EQUIPMENT AND OTHER APPARATUS FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY, AND FOR OTHER PURPOSES AND TO REPEAL CONFLICTING ORDINANCES

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW, COBB COUNTY, GEORGIA, AS FOLLOWS:

WHEREAS, on January 26, 1981, the City of Kennesaw entered into a 35 year franchise agreement (the "1981 Agreement") with Cobb Electric Membership Corporation to grant to it the authority, right, permission and consent to occupy and use the streets, alleys and public places of the City with the present and future limits of the City as from time to time it deemed proper or necessary for the overhead or underground construction, maintenance, operation and extension of poles, towers, lines, wires, cables, conduits, insulators, transformers, appliances, equipment, connections, and other apparatus for the business and purpose of transmitting, conveying, conducting, using, supplying and distributing electricity for light, heat, power and other purposes for which electric current may be or become useful or practicable for public or private use and for other purposes; and

WHEREAS, the 1981 Agreement expired; and

WHEREAS, the City of Kennesaw has the power and authority pursuant to subparagraph (g) of Section 1.03 of the City Charter to grant franchises for public utilities not to exceed thirty (30) years; and

WHEREAS, Cobb Electric Membership Corporation and the City of Kennesaw would like to enter into a new thirty year (30) franchise agreement to allow for the continuation of the rights and obligations described herein.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of Kennesaw, Georgia as follows:

PART 1

That Section APPENDIX D – COBB ELECTRIC MEMBERSHIP CORPORATION FRANCHISE of the Code of Ordinances, Kennesaw, Georgia, is hereby amended to read as follows:

Section I. – Granting of Authority.

Be it ordained by the governing authority of the City of Kennesaw (hereinafter referred to as the "City"), that authority, right, permission and consent are hereby granted to Cobb Electric Membership Corporation, its successors, assigns, lessees and assigns (hereinafter referred to as "Cobb EMC"), for a period of thirty (30) years to occupy and use the streets, alleys and public places of the City within the present and future limits of the said City as from time to time as Cobb EMC may deem proper or necessary for the overhead or underground construction, maintenance, operation and extension of poles, towers, lines, wires, cables, conduits, insulators, transformers, appliances, equipment, connections and other apparatus for the business and purpose of transmitting, conveying, conducting, using, supplying and distributing electricity for light, heat, power and other purposes for which electric current may be or become useful or practicable for public or private use, and to re-enter upon such streets, alleys and public places from time to time as it may deem proper or necessary to perform these functions, and to cut and trim trees and shrubbery when and where necessary, in the judgment of Cobb EMC, to ensure safe and efficient service.

The term "Distribution Facilities" means poles, lines, wires, cables, conductors, insulators, transformers, appliances, equipment, connections, and other apparatus installed by or on behalf of Cobb EMC (whether before or after the adoption of this Ordinance) in the streets, alleys, or public places of the City for the purpose of distributing electricity within the present and future limits of the City. Distribution Facilities do not include any of the following: (i) electric transmission lines with a design operating voltage of 46 kilovolts or greater (hereafter referred to as "Transmission Lines"); (ii) poles, towers, frames, or other supporting structures for Transmission Lines (hereafter referred to as "Transmission Structures"); (iii) Transmission Lines and related wires, cables, conductors, insulators, or other apparatus attached to Transmission Structures; (iv) lines, wires, cables, or conductors installed in concrete-encased ductwork; or (v) network underground facilities.

Section II. – Terms and Considerations.

Be it further ordained that the rights, permission and consents herein contained are made for the following considerations and upon the following terms and conditions, to-wit:

1. Cobb EMC shall pay into the treasury of the City on or before March 1st of each year, a sum of money equal to four percent (or the percentage of gross sales paid by Georgia Power Company as the primary supplier pursuant to O.C.G.A. § 46-3-14 as may be amended from time to time) of the gross sales of electric energy to customers served under residential and commercial rate schedules (as prescribed or amended by the

Georgia Public Service Commission from time to time) within the corporate limits of the City and such expanded limits as may be annexed and four percent of the gross sales of electric energy to customers served under industrial rate schedules (as so prescribed) within the corporate limits of the City during the immediate prior year.

2. The amount, if any, of any tax, fee, charge or imposition of any kind required, demanded or exacted by the City on any account, other than ad valorem taxes on property and license taxes on the sale of home appliances, shall operate to reduce to that extent the amount due from the percentage of gross sales above provided for.
3. Cobb EMC shall fully protect, indemnify and save harmless the City from all damages to person or property caused by the construction, maintenance, operation or extension of its Distribution Facilities resulting there from, for which the said City would otherwise be liable.
4. Cobb EMC shall, in constructing, maintaining, operating and extending its poles, wires and other apparatus, submit and be subject to all reasonable exercises of the police power by the City. Nothing contained herein, however, shall require Cobb EMC to surrender or limit its property rights created hereby without due process of law, including adequate compensation, for any other purpose at the instance of the City or for any purpose at the instance of any other entity, private or governmental.
5. In the event that the City or any other entity acting on behalf of the City requests or demands that Cobb EMC relocate any Distribution Facilities from their then-current locations within the streets, alleys, and public places of the City in connection with a public project or improvement, then Cobb EMC shall relocate, at its expense, the Distribution Facilities affected by such project or improvement. Cobb EMC's obligations under this paragraph shall apply without regard to whether it has acquired, or claims to have acquired, an easement or other property right with respect to such Distribution Facilities and shall not affect the amounts paid or to be paid to the City under the provisions of the 1981 Agreement. Notwithstanding the foregoing provisions of this paragraph, Cobb EMC shall not be obligated to relocate, at its expense, any of the following: (i) Distribution Facilities that are located on private property at the time relocation is requested or demanded; (ii) Distribution Facilities that are relocated in connection with sidewalk improvements (unless such sidewalk improvements are related to or associated with road widenings, the creation of new turn lanes, or the addition of acceleration/deceleration lanes); (iii) streetscape projects or other projects undertaken primarily for aesthetic purposes; or (iv) Distribution Facilities that are converted from an overhead configuration or installation to an underground configuration or installation.
6. The City and Cobb EMC recognize that both parties benefit from economic development within the City. Accordingly, when it is necessary

to relocate any of Cobb EMC's facilities (whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) within the City, the City and Cobb EMC shall work cooperatively to minimize costs, delays, and inconvenience to both parties while ensuring compliance with applicable laws and regulations. In addition, the City and Cobb EMC shall communicate in a timely fashion to coordinate projects included in the City's five-year capital improvement plan, the City's short-term work program, or the City's annual budget in an effort to minimize relocation of Cobb EMC's facilities. Such communication may include, but is not limited to, (i) both parties' participation in the Georgia Utilities Coordinating Council, Inc. (or any successor organization) or a local utilities coordinating council (or any successor organization) and (ii) both parties' use of the National Joint Utility Notification System (or any successor to such system mutually acceptable to both parties).

7. With regard to each streetscape project undertaken by or on behalf of the City, the City shall pay Cobb EMC in advance for Cobb EMC's estimated cost to relocate any of its facilities (whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) in connection with such project. For each streetscape project, Cobb EMC shall estimate in good faith the amount of incremental base revenue, if any, that it will realize as a result of new customer load or expansion of existing customer load attributable to such project; and such estimate shall be based on tariffs in effect at the time that construction of such project begins and shall not include fuel recovery charges, non-electric service billings, or taxes. If such estimate indicates that Cobb EMC will realize incremental base revenue, Cobb EMC shall do one of the following, whichever results in greater cost savings to the City: (i) reduce the City's advance payment to Cobb EMC for relocation costs by ten percent (10%); or (ii) where the City has developed a bona fide marketing plan within twelve months after construction of such project begins, either refund the amount of Cobb EMC's incremental base revenue during such twelve-month period to the City or credit such amount against any future payment due from the City to Cobb EMC. The City and Cobb EMC acknowledge and agree that the amount of any refund or credit calculated pursuant to clause (ii) of the foregoing sentence of this paragraph 4 shall not exceed the amount of the City's advance payment to Cobb EMC for relocation costs associated with such project.
8. With regard to any Small Wireless Facilities as defined in O.C.G.A. § 36-66C-1 et. seq. (as may be amended from time to time) that are attached to or co-located on Distribution Facilities, in addition to the franchise fees paid under paragraph 1 of this agreement, the City reserves the right to charge the provider and/or Cobb EMC fees that are commensurate with those permitted under O.C.G.A. § 36-66C-5 (as may be amended from time to time).

Section III. – Limits or Restricts.

Be it further ordained that nothing contained in this Ordinance shall limit or restrict the right of customers within the corporate limits of the City to select an electric supplier as may hereafter be provided by law.

Section IV. – Filing of written acceptance.

Be it further ordained that Cobb EMC shall, within 90 days from the approval of this ordinance, file its written acceptance of the same with the clerk of said City, so as to form a contract between the parties.

Section V. – Repeal of conflicting provisions.

Be it further ordained that upon such acceptance all laws and ordinances, and all agreements between the parties, in conflict herewith be and the same shall thereupon stand repealed and terminated, respectively.”

Section VI. – Enforcement.

The terms of this Ordinance shall survive any change in State law or Georgia Public Service Commission ruling regarding the imposition of fees for occupying the City right of way, unless such change increases the percentage by which a municipal governing authority may charge an electric supplier for occupying City right of way, and in that event, any such increase shall be honored by Cobb EMC upon the effectiveness of any such law through the term of this Ordinance.


PART 2


This ordinance shall be codified in a manner consistent with the laws of the State of Georgia.

SO ORDAINED this 20th day of July, 2020.

ATTEST:

CITY OF KENNESAW:


Lea Addington, City Clerk


Derek Easterling, Mayor

