



ORDINANCE NO. 1463

ORDINANCE OF THE CITY OF CIBOLO, TEXAS GRANTING A FRANCHISE TO THE PUBLIC UTILITIES OF CIBOLO; CLARIFYING RIGHTS OF RESPONSIBILITIES FOR PUBLIC PROPERTY USE; PROVIDING FOR THE PAYMENT OF FRANCHISE FEES; DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS CONDUCTED IN COMPLIANCE WITH THE TEXAS OPEN MEETINGS ACT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Cibolo (the "City") owns and operates municipal owned utility services ("Cibolo Utilities"); and

WHEREAS, the City Charter Section 10.01 requires that all utilities within the City operate under a franchise agreement; and

WHEREAS, the City Council for the City of Cibolo (the "City Council") finds that not all residents of the City receive services from each of the Cibolo Utilities; and

WHEREAS, the City Council finds that Cibolo Utilities function similarly to investor-owned utility services with funds, expenses, equipment, and land use needs separate from those of the City as a whole; and

WHEREAS, the operation of Cibolo Utilities utilizes City resources, funded by taxpayers, that otherwise could be utilized for City business, operation, and governance; and

WHEREAS, the City collects franchise fees from the revenue of Cibolo Utilities to offset the impact of Cibolo Utilities on the City as a whole; and

WHEREAS, the City Council finds it is best to clarify the authorization of the collection of municipal franchise fees through the use of a franchise ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF CITY COUNCIL OF THE CITY OF CIBOLO, TEXAS, THAT:

SECTION 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby incorporated as part of this Ordinance.

SECTION 2: Definitions. For the purpose of this ordinance, the following words, terms, phrases and their derivations shall have the meaning given herein.

"City " shall mean the City of Cibolo, Texas, a municipal corporation in the State of Texas.

"Cibolo Utilities" of "Cibolo Utility" shall mean any municipal owned utility services provided by the City of Cibolo.

"Consumer" or "Customer" shall mean any person or organization receiving and using service from the Cibolo Utilities

"Franchise" shall mean this Ordinance, and all rights and obligations established herein or as it may be amended.

"Total Recovered Bills" is the total amount of fees received by Cibolo Utilities from consumers or customers.

"Utility Services" shall mean the act of providing any utility to the consumers or customers of the City of Cibolo including utilities provided at the time this ordinance is enacted and any utilities hereinafter provided.

SECTION 3: Grant of Franchise.

- A. To the extent allowed by law, the City hereby grants to Cibolo Utilities a non-exclusive franchise to maintain, construct, equip, extend, replace, alter and otherwise establish and operate in the City, as constituted as of the effective date of this ordinance, or as may hereafter be constituted, works, systems, plants, distribution lines and all related facilities (including those now in service) necessary or appropriate to sell, distribute, convey or otherwise conduct, serve, supply and furnish the inhabitants of the City and others, utility services and said Cibolo Utilities are hereby granted passage and right-of-way in, under, along and across public land, easements, rights-of-way and structures, as they now or hereafter may exist, for every and any such service, use, effect, and lawful purpose as herein mentioned; provided that all work, activity and undertakings by the Cibolo Utilities shall be subject to the terms and provisions of the Franchise.
- B. The construction, maintenance, and operation of the system and property of Cibolo Utilities within the City shall be subject to this Franchise and the ordinances and regulations adopted by the City Council from time to time in the exercise of the City's police and regulatory powers.
- C. This Franchise Ordinance shall run for a term of ten (10) years and shall automatically renew at the expiration of each firm unless other action is taken by City Council. City Council may revoke, amend, or otherwise modify this Franchise Ordinance at any time for any reason.
- D. Cibolo Utilities may not transfer any rights and privileges granted herein.

SECTION 4: Use of Public Property

- A. Cibolo Utilities is authorized to utilize any land which the City is authorized to use subject to and consistent with any terms or conditions of the City's authorization.
- B. One Cibolo Utility usage of land shall not unreasonably or permanently interfere with the operation of another Cibolo Utility operating within the City of Cibolo.
- C. All work must be performed with reasonable diligence and without unnecessary inconvenience to the public or individuals. None of the facilities shall unreasonably endanger the lives of persons, unreasonably interfere with any public improvements the City may deem proper to make, or unnecessarily obstruct the free use of the streets, alleys, bridges, easements or public property.

SECTION 5: Rules and Regulations.

- A. The rates, rules and regulations of Cibolo Utilities shall be subject to approval by City Council.
- B. Cibolo Utilities shall be entitled to require from each and every customer to make such deposits and payments as required by Cibolo Utilities, and to comply with applicable rules and regulations.

SECTION 6: Franchise Fees

- A. The streets, rights-of-way, and public easements to be used by the Cibolo Utilities in the operation of its system within the boundaries of the City are valuable public properties acquired and maintained by the City at great expense to its taxpayers. Additionally, the City incurs costs in regulating and administering these utilities which could otherwise be used for other City business thereby increasing personnel and technology demand. As a result, the City shall through the term of this franchise ordinance collect a Primary Franchise Fee and Offset Costs from Cibolo Utilities as shown below:
 - 1. Primary Franchise Fee: three percent (3%) of the Total Recovered Bills, and
 - 2. Offset Costs: specific percentages of the annual budget for certain departments as specified in the list of City of Cibolo Public Utilities and Offset Costs, and as amended from time to time, attached hereto as Attachment A.
- B. In addition to the fees above, the City may offset additional costs in the event of a failure of the Cibolo Utility or other event requiring extensive additional City resources.
- C. The fee shall be paid monthly.

SECTION 7. Intent and Limitations

This ordinance is intended to identify proper and authorized usage of public property and to authorize and clarify franchise fees collected from public utilities in Cibolo. Nothing herein grants a private right of action for any resident, company, or other individual or entity, whether located in or out of the City, against the City or a City Utility for violation of this ordinance. Further, this ordinance does not establish a standard of care for the purposes of any private rights of action.

SECTION 8. Savings. All rights and remedies of the City of Cibolo are expressly saved as to any and all violations of the provisions of any ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 9. Repeal. This Ordinance shall be and is hereby cumulative of all other ordinances of the City of Cibolo, Texas, and this Ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event, such conflicting provisions, if any, in such other ordinances are hereby repealed.

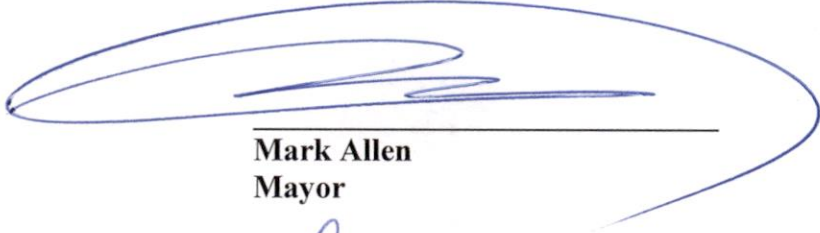
SECTION 10. Severability. If any section, paragraph, sentence, clause, or phrase of this Ordinance shall for any reason be held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and ordained all the remaining portions of this Ordinance without the inclusion of such portion or portions found to be unconstitutional or invalid.

SECTION 11. Open Meeting. The City Council hereby finds and determines that the meeting at which this Ordinance was passed was conducted in accordance with the Texas Open Meetings Act.

SECTION 12. Effective Date. This Ordinance shall become effective and be in full force and effect upon passage.

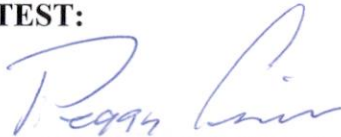
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PASSED, APPROVED, AND ADOPTED THIS 10 DAY OF September 2024.



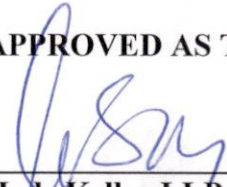
Mark Allen
Mayor

ATTEST:



Peggy Cimics, TRMC
City Secretary

APPROVED AS TO FORM:



Hyde Kelley LLP
City Attorney
Audrey Gutierrez



ATTACHMENT A

LIST OF CIBOLO UTILITIES AND THEIR OFFSET COSTS

Cibolo Utility	Percentage and Department for Offset Costs
Cibolo Water/Wastewater Services:	<ol style="list-style-type: none">1. 30% of the Public Works Department Annual Administration Budget2. 11% of the Human Resources Department Annual Budget3. 7% of the Information Technology Department Annual Budget4. 38% of the Finance Department Annual Budget
Drainage Utility District	<ol style="list-style-type: none">1. 22.5% of the Public Works Annual Administration Budget