

ORDINANCE NO. O-2011-33

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 15, "FRANCHISES", ARTICLE I., "IN GENERAL", SECTION 15-4, "RATE DETERMINATION", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY UPDATING THE PROVISIONS RELATED TO RATE CHANGE DETERMINATION AND PETITION REQUIREMENTS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Tyler City Code Chapter 15 contains provisions related to various franchises; and

WHEREAS, City Code Chapter 15, Article I., contains provisions related to general franchise requirements for rate determination; and

WHEREAS, it is now necessary to amend the Tyler City Code to update the provisions related to rate change determination and petition requirements;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1: That Tyler City Code Chapter 15, "Franchises", Article I., "In General", Section 15-4., "Rate determination", is hereby amended to read as follows:

Sec. 15-4. Rate determination.

a. Upon petition for a change of rates by the regulated entity, or upon motion of the City Council, the City Manager shall require from the regulated entity all data necessary to make a reasonable determination of rate base, expenses, investment and rate of return within the City limits. The City Manager may further require financial data pertaining to operations outside the City is as necessary to make a reasonable determination of rate base, expenses, investment and rate of return within the City limits. The regulated entity shall submit the required information in a form approved by the City Manager (which may be in a form used by a state regulatory agency with jurisdiction over similar regulated entities providing services outside of the City limits). If the regulated entity fails to provide the necessary documentation or other information supporting the costs and expenses shown in the application, the City Manager may reject the petition pursuant to Section 15-4-d., or the City Council may disallow the unsupported costs and expenses in setting new rates. The City Manager shall retain all necessary personnel to make the determination of reasonable rates.

b. The City Manager or designees shall have the right, at reasonable times and for reasonable purposes, to inspect and obtain copies of the papers, books, accounts, documents and other business records, and to inspect the plant, equipment and other property of any regulated entity within its jurisdiction. The City Manager or designee may require, by order or subpoena served on any regulated entity, the production of any books, accounts, papers or records kept by that regulated entity. Failure to produce requested books, accounts, papers or records by a regulated entity shall be considered to be a violation enforceable under Section 1-4 of this code and may be used as a basis by the City Council or City Manager to reject a petition for a change of rates submitted pursuant to Section 15-4.a., and additionally may be a basis to revoke a regulated entity's franchise.

c. This section shall not be construed as a limitation upon the power of the City to discover and inspect financial information and business records of the regulated entity. In addition to the foregoing powers, the City shall have all rights of discovery as provided under the statutes and common law of this state.

d. At any time before the proposed effective date, the City Manager may reject the regulated entity's petition for a change of rates and suspend the rate change if the petition contains any of the following deficiencies:

- (1) The regulated entity has failed to properly complete the rate application;
- (2) The regulated entity has included in the cost of service rate case expenses other than those necessary to complete and file the rate change application;
- (3) The regulated entity has failed to comply with the notice and proof of notice requirements required by the City Manager; or
- (4) The regulated entity has outstanding amounts owed to the City:
 - (a) pursuant to its franchise agreement;
 - (b) for reimbursement of expenses under Section 15-5; or
 - (c) for violations of City Code.

The proposed effective date shall be suspended until a properly completed application is accepted by the City Manager and the regulated entity shall not renotify its customers of a new proposed effective date until the regulated entity receives written notification from the City Manager that all deficiencies have been corrected.

e. Upon the request of the City Manager or upon receipt of petitions from the lesser of 1,000 or 10 percent of the ratepayers of a regulated entity located inside the City limits, the application for rate change shall be set for hearing by the City Council. If an application is set for hearing, the effective date of the rate change shall be suspended for the longest period allowed by law or until the City Council adopts an ordinance setting new rates, whichever is sooner. If the City Council has not set a new rate by the expiration of all lawful suspension periods, the application shall be deemed to have been denied, and the regulated entity's prior rates shall remain in effect. A deemed denial is subject to the City Council's authority to make a final decision after the end of the suspension period.

Sec. 15-5. Reimbursement of expenses.

At the conclusion of any rate proceeding before the City Council including any appeal of the City Council's decision to a state regulatory agency, the regulated entity shall reimburse the City for the reasonable cost of the services of rate consultants, accountants, auditors, attorneys, engineers or any combination thereof, to conduct investigations, present evidence, advise and represent the City. The City Manager or designees shall submit an invoice for the reasonable cost of the services to the regulated entity at any time during or after the conclusion of a rate proceeding. The regulated entity shall pay the invoice in full within 30 days of receipt of the invoice. If the regulated entity disputes any costs, the regulated entity may petition the City Council for review of such costs, but such a petition does not relieve the regulated entity of its obligation to pay. Failure to pay the costs as invoiced shall be a basis for the City to reject any rate applications filed by the regulated entity until the invoice is paid in full and shall be a basis to revoke the regulated entity's franchise.

At the conclusion of any rate proceeding before the City Council including any appeal of the City Council's decision to a state regulatory agency, the regulated entity shall reimburse the City for the reasonable cost of the services of rate consultants, accountants, auditors, attorneys, engineers or any combination thereof, to conduct investigations, present evidence, advise and represent the City.

The City Manager or designees shall submit an invoice for the reasonable cost of the services to the regulated entity at any time during or after the conclusion of a rate proceeding. The regulated entity shall pay the invoice in full within 30 days of receipt of the invoice. If the regulated entity disputes any costs, the regulated entity may petition the City Council for review of such costs, but such a petition does not relieve the regulated entity of its obligation to pay. Failure to pay the costs as invoiced shall be a basis for the City to reject any rate applications filed by the regulated entity until the invoice is paid in full and shall be a basis to revoke the regulated entity's franchise.

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be May 13, 2011.

PASSED AND APPROVED this 11th day of May, A. D., 2011.


BARBARA BASS, MAYOR OF THE
CITY OF TYLER, TEXAS

ATTEST:

APPROVED:


CASSANDRA BRAGER, CITY CLERK


GARY C. LANDERS, CITY ATTORNEY

