

Franchises

Council Work Session

March 19, 2013

- 2 different utility franchise ordinances recommended for approval – natural gas and electric
- 3 existing electric franchisees - Kentucky Utilities, Blue Grass Electric, Clark Energy
- 2 existing gas franchisees - Columbia Natural Gas and Delta Natural Gas

- Once the ordinances are adopted by Council, they are advertised for bid.
- Anticipate all current franchisees will bid.
- Bids should be back in front of Council for final approval shortly after Council Spring recess.

- ***The Public Service Commission (PSC) has exclusive jurisdiction over utility rates and services.*** Cable television is not considered a utility by the PSC, and is instead regulated at the federal and local (limited) level.
- The PSC also dictates the service areas for each utility.

- A utility is required to have jurisdictional (local government) consent in order to place its facilities within the public rights-of-way or on public property.

- A franchise agreement is the legal mechanism for granting the utility the use of the public right-of-way. Franchises are:
 - non-exclusive
 - ***advertised and bid out as an ordinance/resolution (negotiated in advance)***
 - 20 years or less in duration (including extensions)
 - Uniform as to each respective type of utility

- Lexington is compensated through a franchise fee applied to certain defined gross revenues related to the utility's provision of services within Fayette County. Telecommunications and cable utilities are excluded from paying this fee this pursuant to the state telecommunications tax law.
 - the franchise fee is a separate line item on the bill
 - current fee on franchises is 3% (plus permitting cost at option of utility)

- Lexington adopted a comprehensive regulatory scheme pertaining to public-right-of-way regulation and permitting (Chapter 17C of the Code) in 2002 which also applies to franchisees. This has been incorporated by reference into each franchise agreement entered into since it was adopted.

- Franchise fee remains at 3% for now. Council can raise the fee at any time to an amount not to exceed 5% (has to go to PSC, normally takes approximately 45-75 days to go into effect)

- Fee language includes additional protection to make sure existing revenue sources continue to be included as part of the franchise fee
- In most instances if a new regulated service related to the use of Fayette County's public rights-of-way was created, the franchise fee would apply at the option of Lexington

- Franchise for 5 years with the ability of LFUCG to extend for up to 2 additional periods of 5 years each
- Utilities to appear before Council and provide information related to franchise upon request
- Payments to be made monthly (unless existing utility system will not support it)