

TITLE 4

BUSINESS LICENSES AND REGULATIONS

Chapters:

- 4.04 Cable Television Franchise
- 4.08 Electric Franchise
- 4.12 Gas Franchise
- 4.16 Telephone Franchise
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CHAPTER 4.04

CABLE TELEVISION FRANCHISE

Sections:

- 4.04.01 Franchise extended
- 4.04.02 Confirmation

4.04.01 Franchise extended The term of the Franchise and the rights granted under the Cable Franchise Ordinance and Section 4.04.01 of the Green Forest Municipal Code under the title "Cable Television Franchise" shall take effect and be in force from and after the final passage hereof, as required by law, and upon filing of acceptance by Twin Lakes Television Corporation, the predecessor-in-interest to TCA Cable Partners d/b/a Cox Communications, or its successor in interest, if required, and shall continue in full force and effect for a term ending on December 31, 2035. (Ord. No. 2017-662, Sec. 1.)

4.04.02 Confirmation Except as amended hereby, the franchise shall remain in full force and effect and is hereby ratified and confirmed in all respects. (Ord. No. 557, Sec. 2.)

CHAPTER 4.08

ELECTRIC FRANCHISE

Sections:

- 4.08.01 Electric franchise granted to Arkansas Power and Light Company
- 4.08.02 Rights and responsibilities of grantor and grantee
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- 4.08.08 Standard of care for facilities
- 4.08.09 Franchise tax
- 4.08.10 Street lighting
- 4.08.11 Private generation facilities allowed

4.08.01 Electric franchise granted to Arkansas Power and Light Company The city of Green Forest, Arkansas (hereinafter called Grantor) hereby grants to the Arkansas Power and Light Company, its successors and assigns (hereinafter called Grantee), the exclusive right, privilege and authority within the present and all future expansion of the corporate limits of the city of Green Forest, Arkansas, except for such area within the present corporate limits, which at the date of enactment hereof is served by another supplier of electric energy, and except for such other areas which may be later annexed, where Grantee is not allowed by law to serve, (1) to sell, furnish, transmit and distribute electric power and energy to Grantor and to all inhabitants and consumers within said limits, and (2) to construct, maintain, operate and extend a system for such purposes and to enter on, under and upon and use any and all of the streets, alleys, avenues, bridges and other public grounds and ways belonging to, or under the control of Grantor, for the purpose of erecting, maintaining, repairing, replacing and operating poles, wires, anchors, stubs, transformers, substations, cables, conduits and other related facilities, appliances and apparatus which are necessary for, or useful in, the furnishing, sale, transmission or distribution of said electric service (hereinafter called facilities). (Ord. No. 266, Sec. 1)

4.08.02 Rights and responsibilities of grantor and grantee Grantee shall, and does by acceptance hereof, agree to provide

to the city and its inhabitants adequate and reasonable electric service as a public utility and the facilities necessary to provide such service. Grantor, in recognition of the large and continuing investment necessary for Grantee to perform its obligations hereunder, and the need and duty to promptly construct its facilities, as defined above, required to serve customers, in all areas and zones of the city, consents to the construction of such facilities as defined in Section 4.08.01 in all such areas and zones, and Grantor agrees to protect by ordinance, regulation and otherwise, to the fullest extent permitted by law, and except as otherwise, limited herein, the grants of rights and privileges to Grantee set forth in Section 4.08.01 from interference with, or duplication by, other persons, firms or corporations seeking to engage in the sale or distribution of electric energy. (Ord. No. 266, Sec. 2)

4.08.03 Rights and responsibilities of grantor and grantee All facilities of Grantee which may be located on public ways, places and public property, as authorized herein, shall be located so as to not unreasonably obstruct public use and travel. All of Grantee's facilities shall be constructed, operated and maintained in accordance with standards at least equivalent to the standards prescribed by the National Electrical Safety Code. Grantee, its successors and assigns, shall replace and repair, at its own expense, all excavations, holes or other damage caused or done by it to public streets, ways, places and public property in the construction, operation and maintenance of its facilities. (Ord. No. 266, Sec. 3)

4.08.04 Rights and responsibilities of grantor and grantee The Grantee, its successors and assigns, is hereby given the right to trim, cut or remove trees, shrubbery or growth on or in public ways, places and public property which interfere or offer hazards to the operation of Grantee's facilities used or useful for the rendition of electric service, and, further, Grantee is hereby given the right, authority and permission to trim, cut and remove portions of trees, shrubbery or growth growing on private property but overhanging or encroaching on public ways, places and public property which interfere or offer hazards to the construction, operation and maintenance of Grantee's facilities. (Ord. No. 266, Sec. 4)

4.08.05 Termination procedure The rights, privileges and authority hereby granted shall exist and continue from the date of passage of this ordinance, and thereafter, until terminated in accordance with provisions of Section 44 of Act 324 of the 1935 Acts of the State of Arkansas, as presently enacted or hereafter amended. (Ord. No. 266, Sec. 5)

4.08.06 Rates The rates which are to be charged by Grantee for electric service hereunder shall be those which are now lawfully approved or prescribed, and as said rates may, from time to time, be amended by Grantee in accordance with law or by any regulatory authority having jurisdiction thereof. (Ord. No. 266, Sec. 6)

4.08.07 City not liable for negligence of grantee In the construction, operation, and maintenance of its facilities, said Grantee shall use reasonable and proper precaution to avoid damage or injury to persons or property and shall hold and save harmless the said Grantor from damage, injury, loss or expense caused by the negligence of the Grantee, or its agents, servants or employees, in constructing, operating and maintaining said facilities or in repaving or repairing any streets, avenues, alleys, bridges or other public grounds. (Ord. No. 266, Sec. 7)

4.08.08 Standard of care for facilities The Grantee shall endeavor at all times to keep its facilities in a reasonable state of repair, and to conform to such practices and install such appliances and equipment as may be in keeping with the customary usage and practice in cities of similar size in this State during the time this franchise shall remain in force. (Ord. No. 266, Sec. 8)

4.08.09 Franchise tax Beginning in 1966, and thereafter during the life of this franchise, the Grantee shall pay to Grantor each year, a franchise tax in an amount equal to: Four and twenty-five hundredths percent (4.25%) of the preceding calendar year's gross residential and commercial electric revenues as paid to the Grantee by residential and commercial customers located within the corporate limits of the city of Green Forest. Payments shall be made by the Grantee to the Grantor in approximately equal quarterly installments beginning in January, 1966. Residential and commercial electric revenues are those revenues so classified pursuant to Grantee's uniform classification standards. Grantor shall have the right to examine and verify, from the records of the Grantee, any data relating to the gross revenues of Grantee from customers on which said franchise tax is due. In the event of a controversy between the Grantor and Grantee as to the amount of gross revenues received by Grantee in the city of Green Forest upon which said tax is due, such controversy shall be referred to the Arkansas Public Service Commission, or such successor regulatory agency which may have jurisdiction over the Grantee, for final determination, and the decision of said Commission shall be binding upon both parties hereto.

It is expressly agreed and understood by the Grantor and Grantee that the aforesaid payment shall constitute and be considered as complete payment and discharge by the Grantee, its

successors and assigns, of all licenses, fees, charges, impositions or taxes of any kind (other than automobile license fees, special millage taxes, general ad valorem taxes and other general taxes applicable to all citizens and taxpayers) which are now or might in the future be imposed by the Grantor under authority conferred upon the Grantor by law. In the event such other tax or taxes are imposed by Grantor, the obligation of the Grantee set forth in Section 4.08.09 hereof, to pay the city the sum of four and twenty-five hundredths percent (4.25%) annually of the gross residential and commercial electric revenues shall immediately terminate. (Ord. No. 266, Sec. 9)

4.08.10 Street lighting Electric service furnished the Grantor for street lighting and other purposes shall be paid for by the Grantor in accordance with the applicable rate schedules of the Grantee now on file and/or as they may in the future be filed by the Grantee and approved by the Arkansas Public Service Commission or other regulatory authority having jurisdiction. The Grantee shall have the privilege of crediting any amount due Grantor with any unpaid balances due said Grantee for electric service rendered to said Grantor. (Ord. No. 266, Sec. 10)

4.08.11 Private generation facilities allowed Nothing herein shall be construed to prohibit any person, firm or corporation from owning and operating facilities for generation, distributing, or furnishing electric energy for his or its own use or the use of his or its tenants, all of which facilities and use are wholly on the same premises owned by such person, firm or corporation. (Ord. No. 266, Sec. 11)

CHAPTER 4.12

GAS FRANCHISE

Sections:

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|---------|--|
| 4.12.01 | Franchise granted to Arkansas Western Gas Company |
| 4.12.02 | Rights and responsibilities of grantee |
| 4.12.03 | Construction fees, police regulation, safety precautions |
| 4.12.04 | Grantee responsibilities |
| 4.12.05 | Rates, rules and regulations |
| 4.12.06 | Information, definitions |
| 4.12.07 | Franchise tax |
| 4.12.08 | Term |

4.12.01 Franchise granted to Arkansas Western Gas Company That the city of Green Forest, hereby grants to the Arkansas Western Gas Company the exclusive right, privilege and authority within the present and all future expansions of the corporate limits of the city of Green Forest (1) to sell, furnish, transmit and distribute natural

gas to all inhabitants and consumers within the said limits; and (2) subject to the terms, conditions and stipulations mentioned in this ordinance, consents and the right, permission and franchise is hereby given to the Arkansas Western Gas Company, a corporation organized and existing pursuant to the laws of the State of Arkansas, Grantee, and to its successors, lessees, and assigns to lay, construct, equip, operate, repair, and maintain a system of gas mains, pipes, conduits, feeders and the appurtenances for the purpose of supplying and distributing natural gas for light, fuel, power, and heat and for any other purpose, to the residents or inhabitants of the said city; and further, the right to lay, construct, operate and maintain a system of gas mains, pipe lines, pipe conduits and feeders and the necessary attachments, connections, fixtures and appurtenances for the purpose of conveying, conducting or distributing natural gas from any point beyond said city limits in order to enable the said Grantee to distribute and sell natural gas to the said city and to the residents or inhabitants thereof, and to others. As used in this ordinance, the terms "natural gas" and "gas" shall be defined as including, in addition to natural gas, such alternate, substitute or supplemental fuels as (without necessarily limited to) liquefied natural gas, liquefied petroleum gas, synthetic natural gas and propane air. (Ord. No. 344, Sec. 1)

4.12.02 Rights and responsibilities of grantee The Grantee herein is expressly given the permit (subject to the proviso hereinafter contained) to use the streets, avenues, roads, highways, alleys, sidewalks and other public places, as now laid out, or hereafter to be established, for the purpose of laying gas mains, pipe lines, conduits and feeders, and the necessary attachments, fixtures, connections and appurtenances for the purpose of conveying or conducting natural gas from any point within the said city or to any point beyond the city limits of the said city, or to any other point, through and beyond the city limits of said city, and to operate and maintain a system of pipe lines, pipes, conduits, feeders and the necessary attachments, connections, fixtures and appurtenances for the distribution of natural gas within said city to serve the said city and the residents and inhabitants thereof, and others; provided, however, that where alleys are accessible for laying mains and pipes, the city shall have the right to require that the mains and pipes shall be laid in the alleys instead of the streets, so long as this is economically feasible (does not create an economic hardship). (Ord. No. 344, Sec. 2)

4.12.03 Construction fees, police regulations, safety precautions No fees or charges of any kind shall be imposed by Grantor upon the Grantee or upon any successors, or upon any consumer of natural gas for the breaking or opening of any highway, street, road, avenue, alley, or other public places, or for the laying of any main, service pipe, or other connections therein, except as would be generally imposed on others performing similar work under similar circumstances and conditions.

Nothing in this franchise shall be construed in such manner as to in any manner abridge the right of the city to pass and enforce the necessary police regulations for the purpose of protecting the citizens of said city and their property and the property of the Grantee.

Grantee shall at all times keep and display the necessary danger signals and proper guards around all excavations and obstructions and shall keep sufficient space in good condition for the travel of vehicles on at least on side of all excavations and obstructions, and shall as soon as practicable restore all openings on the highway, road, street, avenue, alley and other public places to condition equally as good as before said openings or obstructions were made.

Anything to the contrary notwithstanding, when in the judgment of Grantee it is necessary for the safety of the citizens, to divert or detour traffic from the area of excavations they have the power to so do upon notice to said city. (Ord. No. 344, Sec. 3)

4.12.04 Grantee responsibilities The Grantee shall do no injury to any highway, road, street, avenue, alley, lane, bridge, stream or water course, park or public place, except as specifically allowed, nor with any public or private sewer or drainage system, or water lines, now or hereafter laid or constructed by the said city or by any authorized person or corporation, but no sewer or water pipes, electric conduits, telephone or TV cables shall be so laid as to interfere unnecessarily with any gas main or pipes which shall have been laid prior to the time of laying such electric conduit, telephone and TV cables, sewer or water pipes. The Grantee shall fully indemnify and save harmless the city from any and all claims for damage for which said city shall or might be made or become liable by reason of the granting of this franchise, or any negligence or carelessness on the part of said Grantee, or because of any act or omission of the Grantee in the construction and operation of its system of mains and pipes. (Ord. No. 344, Sec. 4)

4.12.05 Rates, rules and regulations Natural gas service shall be provided under the terms and conditions herein specified and pursuant to the rules and regulations of the Arkansas Public Service Commission governing utility service, as well as Grantee's rules and regulations governing natural gas service on file with the Arkansas Public Service Commission and as interpreted and enforced by grantee. All utility services shall conform with these rules and regulations, as well as any other applicable rules and regulations, federal or state laws, including but not limited to the Arkansas Plumbing Code.

The rates which are to be charged by Grantee for natural gas service hereunder shall be those which are now lawfully approved or prescribed, and as said rates, may, from time to time, be lawfully approved or prescribed by the Arkansas Public Service Commission or any successor regulatory authority having jurisdiction thereof.

The Grantee shall have the right to make and enforce as a part of the conditions under which it will supply natural gas for heat, power, light, fuel or other purposes as herein provided, all needful rules and regulations not inconsistent with law and the provisions of this franchise. (Ord. No. 344, Sec. 5)

4.12.06 Information, definitions The Grantee shall furnish promptly to the proper authorities any and all information which may be asked for by them in regard to the size, location or depths of any of the pipes, mains, conduits, or service pipes, in any form whatsoever, and any other information in regard to its occupation of roads, highways, streets, avenues, or public grounds of said city, which they may demand. Whenever the word Grantee occurs in this ordinance, it shall mean and it shall be understood to be the Arkansas Western Gas Company, its successors, lessees or assigns, and whenever the words "Authorities" or "proper authorities" occur in this franchise they shall mean and shall be understood to mean the authorized officer or officers, committee or board representing the city of Green Forest, Arkansas, or Grantor. (Ord. No. 344, Sec. 6)

4.12.07 Franchise tax During the life of this franchise, the Grantee shall pay to Grantor each year a franchise tax in an amount equal to four percent (4%) of the Grantor's revenues before taxes for residential, four percent (4%) for commercial and two percent (2%) for industrial revenues as paid to the Grantee by residential, commercial and industrial customers located within the corporate limits of the city of Green Forest. Payments shall be made by the Grantee to the Grantor in quarterly installments and Grantee shall have thirty (30) days after the end of each calendar quarter within which to make such payment. Residential, commercial and industrial gas revenues are those revenues so classified pursuant to Grantee's uniform classification standards. Grantor shall have the right to examine and verify, from the records of the Grantee, any data relating to the gross revenues of Grantee from customers on which said franchise tax is due. In the event of a controversy between the Grantor and Grantee as to the amount, of gross revenues received by Grantee in the city of Green Forest upon which said tax is due, such controversy shall be referred to the Arkansas Public Service Commission, or such successor regulatory agency which may have jurisdiction over the Grantee, for final determination, and the decision of said Commission shall be binding upon both parties hereto.

It is expressly agreed and understood by the Grantor and Grantee that the aforesaid payment shall constitute and be considered as complete payment and discharge by the Grantee, its successors and assigns, of all licenses, fees, charges, impositions or taxes of any kind (other than automobile license fees, improvement districts, special millage taxes, and the general ad valorem taxes) which are now or might in the future be imposed by the Grantor under authority conferred upon the Grantor by law. In the event such other tax or taxes are imposed by Grantor, the obligation of the Grantee set forth in Section 4.12.07 hereof, to pay the franchise taxes annually shall immediately terminate. (Ord. No. 344, Sec. 7)

4.12.08 Term This franchise shall take effect and continue and remain in force perpetually as provided in Section 44 of Acts of 1935, No. 324, Acts of the state of Arkansas, as same may be amended from time to time, and upon the written acceptance by the Grantee of the terms and conditions of this franchise. (Ord. No. 344, Sec. 8)

CHAPTER 4.16

TELEPHONE FRANCHISE

Sections:

- 4.16.01 Definitions
- 4.16.02 Grant of authority
- 4.16.03 Non-exclusive grant
- 4.16.04 Compliance with applicable laws and ordinances
- 4.16.05 Availability of rates, terms and conditions
- 4.16.06 Company liability-indemnification
- 4.16.07 Conditions of street occupancy
- 4.16.08 Approval of transfer of this franchise
- 4.16.09 Supervision and inspection
- 4.16.10 Term of franchise
- 4.16.11 Payment to city
- 4.16.12 Adjustments to franchise fees
- 4.16.13 Failure to enforce rights
- 4.16.14 Partial invalidity and repeal provision
- 4.16.15 Acceptance of agreement
- 4.16.16 Authorization

4.16.01 Definitions For the purposes of this ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. The word "shall" is always mandatory and no merely directory.

Basic local service means the provision to residential and single line business customers in Green Forest, Arkansas, of services composed of a touch tone switched access line and dial tone, of quality sufficient for two-way voice and 9600 band data/fax communications.

City is the city of Green Forest, Arkansas.

Company is Windstream Arkansas, LL.C., a limited liability company and the grantee of the rights under this franchise.

Council is the Mayor and City Council of Green Forest, Arkansas.

Person is any person, firm, partnership, association, corporation, company, or organization of any kind.

Public ways means streets, avenues, alleys bridges, viaducts, rights-of-way, easements, grounds and other public places owned or controlled by, leased to or granted to City. (Ord. No. 2008-591, Sec. 1.)

4.16.02 Grant of authority There is hereby granted by the City to Company, subject to the terms and conditions hereinafter set forth, a franchise for the right and privilege to construct, erect, operate, maintain, and own a system, including all poles, wires, cables, fibers, underground conduits, manholes, and other communications fixtures and appliances necessary or convenient for the construction, maintenance and operation in City of the system and any lines connected therewith, including, but not limited to, the rendition of local and long distance telephone service, in, upon, across, along, above, over, and under the public ways now laid out or dedicated, and all extensions thereof and additions thereto, located within City. (Ord. No. 2008-591, Sec. 2.)

4.16.03 Non-exclusive grant Nothing herein contained shall be construed as giving Company any exclusive privilege at any time during the term of this franchise. (Ord. No. 2008-591, Sec. 3.)

4.16.04 Compliance with applicable laws and ordinances Company shall, in connection with the protection of the health and safety of the public, during the term of this franchise, be subject to the lawful exercise of the police power by City and to such reasonable regulations governing public ways as City shall hereafter by resolution or ordinance promulgate. Every installation by Company shall be in accordance with the applicable codes then in force in City. (Ord. No. 2008-591, Sec. 4.)

4.16.05 Availability of rates, terms and conditions Company shall have the option of modifying the provisions of this agreement to be consistent with the provisions of any franchise agreement entered into between City and any other communications service provider in order to ensure that City offers this franchise to Company on competitively neutral terms as required by the Federal Telecommunications Act of 1996. (Ord. No. 2008-591, Sec. 5.)

4.16.06 Company liability-indemnification It is expressly understood and agreed by and between Company and City that each, as an indemnifying party, shall hold the other, as an indemnified party, harmless from all loss sustained by the indemnified party, on account of any suit, judgment, execution, claim or demand whatsoever that results from negligence on the part of the indemnifying party in the construction, operation, or maintenance of the system in City. In the event any claim or action is brought against City for which Company might be liable as an

indemnifying party under this section, City shall promptly give notice to company of such claim or action and a description of the source and nature thereof. Failure to promptly give such notice shall relieve company of any liability thereunder with respect to the claim or action of which such notice was not properly given. Upon timely notice of any claim or action within the scope of this section, Company shall have the right, but not the obligation, to negotiate a settlement or compromise (any such settlement or compromise being subject to the approval of the indemnified party, which approval shall not be unreasonably withheld) of any such claim or action, or to defend actions instituted at the sole cost and expense of Company. (Ord. No. 2008-591, Sec. 6.)

4.16.07 Conditions of street occupancy

- A. Use Company shall have the right to determine the number and location of all transmission and distribution structures, lines, and equipment for the proper operation of the system on the public ways, and Company shall locate such system as is reasonable under the particular circumstances to cause minimum interference with the proper use of public ways. City shall not grant any request for any use or occupancy of public ways in proximity to the system that would conflict with the Company's use or occupancy herein permitted or take any action that would be inconsistent or adverse to the Franchisee's use or occupancy of the system.
- B. Restoration In case of any disturbance by Company of pavement, sidewalk, driveway, or other surfacing of City, Company shall at its own cost and expense, replace and restore all sidewalk, driveway or surface of any street or alley disturbed, to as reasonable good a condition as before said work was commenced.
- C. Relocation In the event that at any time during the term of this franchise, City in its governmental capacity shall lawfully elect to alter or change its public ways, Company, as reasonable necessary to maintain its system, and upon reasonable notice by City, shall relocate or adjust its poles, wires, cable, underground conduits, manholes, or other fixtures. If City's request for relocation occurs on or within the first year following the installation of the facilities, and at the time of Company's installation, City knew, but failed to advise Company of its plans that would require such alteration, then the cost of relocation shall be at City's expense. If city's request for relocation occurs after the times and circumstances described above, Company agrees to bear the reasonable expenses incurred by it in its complying with this provision. City cannot, in its governmental capacity or otherwise, require Company to bury its system or a portion thereof, including but not limited to cables and wires unless City agrees to bear the cost for such relocation. Company shall not be liable for the payment of any expense incurred

by it in the event Company is required to adjust or relocate its poles, wires, cables, underground conduits, manholes, and other telephone fixtures, where such alteration is made necessary by an act of City in its proprietary, non-governmental capacity or due to actions of a third party.

- D. Temporary removal of wire for building moving Company shall, on the request of any person holding a building moving permit issued by City, temporarily raise or lower its wires to permit the moving of building. The expense of such temporary removal, raising, or lowering of wires shall be paid by the person requesting the same except where the person is City, and company shall have the authority to require such payment in advance. Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes unless there is an emergency.
- E. Utility pole and use rental Company shall have the right to use utility poles erected by City upon obtaining prior permission from City Manager or Mayor of City, or her or his designate.
- F. Tree trimming Company may trim trees upon and overhanging the public ways as to prevent the branches of the trees from coming in contact with the wires, cables or facilities. (Ord. No. 2008-591, Sec. 7.)

4.16.08 Approval of transfer of this franchise Company shall have the right to transfer or assign this franchise effective upon the assignee or transferee filing in the office of City Clerk an instrument, lawfully executed, reciting the fact that such assignee or transferee has accepted this franchise and agreeing to be bound by each and everyone of the terms and provisions hereof. (Ord. No. 2008-591, Sec. 8.)

4.16.09 Supervision and inspection City shall have the right to inspect all work performed by Company on, along, in, or across any of the public ways of City to ensure compliance with the rules and regulations of City and any pertinent ordinances governing installations which affect, or might affect, such public ways. Company shall maintain its system in reasonable operating condition at all normal times during the term of this franchise. An exception to this condition is automatically in effect when service furnished by Company is interrupted, impaired, or prevented by fires, strikes, riots or other occurrences beyond the control of Company, or by storms, floods, or other casualties, in any of which events Company shall do all things reasonably within its power to restore normal service. (Ord. No. 2008-591, Sec. 9.)

4.16.10 Term of franchise The term of the Franchise and the rights granted under the Telephone Franchise Ordinance and under Section 4.16.10 of the Green Forest Municipal Code under the title "Cable Television Franchise" shall take effect and be in force from and after the final passage hereof, as required by law, and upon filing of acceptance by the Company, if required, and shall continue in full force and effect for a term ending on December 31, 2035. (Ord. No. 2017-661, Sec. 1.)

4.16.11 Payment to City Company shall pay to City in consideration of this franchise an annual amount equal to four percent (4%) of its recurring basic local service revenue derived from subscribers of telephone service who are located within the corporate limits of City. Company will bill its subscribers within the corporate limits of City such franchise fee, and reflect such charge on its invoices to subscribers within the corporate limits of City. The payments required by this section shall be paid quarterly with payments due within thirty days after the end of each quarter, throughout the term of this franchise, except that the first payment shall be for that portion of the prior quarter subsequent to the passage of this ordinance and acceptance by Company of this franchise. (Ord. No. 2008-591, Sec. 11.)

4.16.12 Adjustments to franchise fees The amount, if any, of a tax, fee, charge or imposition of any kind required, demanded or exacted by or on behalf of City on any account, other than ad valorem taxes on property, shall operate to reduce to the extent of such tax, fee, charge or imposition, the amount due from the percentage of revenues as provided in 4.16.11 above. (Ord. No. 2008-591, Sec. 12.)

4.16.13 Failure to enforce rights Either party's failure to enforce, on one or more occasions, to insist upon or seek compliance with any term contained within this franchise agreement will not be considered a waiver to enforce such rights, nor shall such failure excuse the other party from complying with all terms contained in the franchise agreement at all times during the effective term of this franchise agreement. (Ord. No. 2008-591, Sec. 13.)

4.16.14 Partial invalidity and repeal provision If any section, sentence, clause, or phrase of this ordinance is for any reason held to be illegal, *ultra vires*, or unconstitutional, such invalidity shall not affect the validity of the remaining portions of this ordinance if the validity does not substantially alter the meaning thereof. All ordinances and agreements and parts of ordinances and agreements in conflict herewith are hereby repealed. (Ord. No. 2008-591, Sec. 14.)

4.16.15 Acceptance of agreement Company shall have sixty (60) days from and after the first passage and approval of this ordinance to file its written acceptance thereof with the City Clerk, and upon such acceptance being filed, this ordinance shall take effect and be in force from and after the date of this passage and approval by the Mayor, and shall effectuate and make binding the agreement provided by the terms hereof. (Ord. No. 2008-591, Sec. 15.)

4.16.16 Authorization This franchise ordinance is based on agreement authorized by the Mayor and Council of city of Green Forest and by proper corporate authority of Windstream Arkansas, LL.C. (Ord. No. 2008-591, Sec. 16.)

CHAPTER 4.20**WATER FRANCHISE****Sections:**

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|---------|------------------|
| 4.20.01 | Levied |
| 4.20.02 | In lieu of taxes |
| 4.20.03 | Franchise fee |

4.20.01 Levied A franchise fee is hereby levied in an amount equal to five percent (5%) of gross income from monthly water sales of the System to customers whose premises are located within the corporate limits of the City plus five percent (5%) of gross income from monthly sewer service charges of the System that are collected from customers whose premises are located within the corporate limits of the City. the franchise fee for each month shall be payable on the first business day of the following month. The franchise fee shall be payable solely from surplus revenues of the System. The franchise for any month shall be forgiven to the extent, if any, surplus revenues of the System available for payment on any due date are insufficient to make the payment. (Ord. No. 464, Sec. 1)

4.20.02 In lieu of taxes The franchise fee herein provided for shall be paid in lieu of taxes and in return for police, fire and health protection and in return for administrative and other services furnished the system by the city. (Ord. No. 459, Sec. 2.)

4.20.03 Franchise fee Any surplus in the Revenue fund after making the required deposits into the 1992 Bond fund and the other funds as set forth in the prior ordinances and as set forth herein may be used only as follows:

- A. An amount equal to five percent (5%) of gross income from water sales of the System to premises located within the corporate limits of the City for the preceding month plus five percent (5%) of gross income from sewer service charges of the System to premises located within the corporate limits of the city for the preceding month shall be transferred to the City's General Fund as a franchise fee in accordance with Ord. No. 459 of the City, as amended; and
- B. The balance shall be used only for expenditures for the system. (Ord. No. 464, Sec. 2.)

CHAPTER 4.24

OUTDOOR SALES

Sections:

- 4.24.01 Definitions
- 4.24.02 Permit required
- 4.24.03 Terms
- 4.24.04 Fees
- 4.24.05 Penalties

4.24.01 Definitions Definition of terms:

- A. The terms "outdoor rummage sales," "yard sales," "porch sales," and "garage sales" shall be understood to mean and include all sales which the general public may attend, which are held on privately owned property either wholly or partly outdoors, regardless whether such property is ordinarily used for residential, commercial, social and/or religious purposes, which are of a duration of not more than three(3) consecutive calendar days, and at which items of new and/or used merchandise, clothing, crafts, live plants, household furnishings and appliances, tools, and other items commonly sold at such sales are offered to the public for purchase.

- B. Specifically excepted are sales by merchants or organizations of items which such merchants or organizations ordinarily offer for sale in the course of operating their established business enterprises on a regular day-to-day basis and at an established commercial location. Also excepted are judicial sales. (Ord. No. 505, Sec. 1.)

4.24.02 Permit required No person, firm, partnership, corporation or organization shall hold or maintain any garage sale, porch sale, sidewalk sale, outdoor rummage sale or yard sale without first having applied for and having actually obtained a written permit for the same from the office of the City Clerk. (Ord. No. 505, Sec. 1.)

4.24.03 Terms Terms under which permits are issued:

- A. Permits shall be on a form prepared by the office of the City Clerk.
- B. Permits will be issued on all properly completed forms.
- C. All persons or other entities obtaining permits shall agree to remove all signs regarding said sale within one day after said sale.
- D. Permits shall be for a period of time not to exceed three (3) consecutive calendar days, and the date or dates of the sale permitted thereby shall be clearly stated on each permit, together with the name of the individual signing the application for the same, the address of the sale, and the date of issuance of the permit.
- E. Each applicant for a permit heretofore required, whether an applicant by virtue of being the individual signing the application, or by virtue of being the name applicant, or by virtue of being a contributor of things to be offered for sale, shall be entitled to receive six (6) permits per calendar year.
- F. Sales may take place in daylight hours only.
- G. Following every sale all remaining sales items, display tables, shelves, and etc. shall be removed within two (2) days after sales permit expires.
(Ord. No. 505, Sec. 1.)

4.24.04 Fees a permit fee of One Dollars (\$1.00) shall accompany each application filed with the office of the City Clerk. Sales permits must be displayed in a prominent place at the location of the sale for the duration of the sale and subsequent clean-up period. (Ord. No. 505, Sec. 2.)

4.24.05 Penalties any person, firm, partnership, corporation or organization violating any provision of this chapter shall be deemed guilty of a misdemeanor; and each day that any violation shall be in existence shall be deemed a separate offense. Upon conviction of such offense, the person, firm, partnership, corporation or organization so convicted shall be fine, for each separate offense, in a sum of not less than Twenty-Five Dollars (\$25.00) and not more than One Hundred Dollars (\$100.00).

CHAPTER 4.28

BUSINESS LICENSES

Sections:

4.28.01	Business license required
4.28.02	Definitions
4.28.03	Purpose and duration
4.28.04	License fee
4.28.05	Registration required
4.28.06	False application unlawful
4.28.07	Display and transfer
4.28.08	Administration of ordinance
4.28.09	Inspections and audits
4.28.10	Delinquent license fee
4.28.11	Notices
4.28.12	Denial of license
4.28.13	Suspension or revocation
4.28.14	Appeal to City Council
4.28.15	Violations
4.28.16	Out-of-city businesses

4.28.01 Business license required Every person engaged or intending to engage in any calling, business, occupation or profession listed in the rate classification index portion of this ordinance in whole or in part within the limits of the city of Green Forest, Arkansas, is required to pay an annual license fee and obtain a business license as herein provided. (Ord. No. 637, Sec. 4.28.)

4.28.02 Definitions The following word, terms and phrases, when used in this ordinance, shall have the meanings ascribed herein:

Asst. Treasurer means the person designated to administer this ordinance.

Business means a calling, occupation, profession or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly. A charitable organization shall be deemed a business unless the entire proceeds of its operation are devoted to charitable purposes.

City means the city of Green Forest, Arkansas.

Council means the Green Forest, Arkansas City Council.

Home occupation shall be permitted in any residential district, provided such occupation:

- A. Is conducted by no other person than members of the family residing on the premises;
- B. Is conducted within the principal building and utilizes not more than twenty-five percent (25%) of total floor area of principal residence;
- C. Produces no alteration or change in the character or exterior appearance of the principal residence;
- D. No display of products shall be visible from the street and only articles made on the premises may be sold; except that non-durable articles (consumable products) that are incidental to a service, which service shall be the principal use in the home occupation; may be sold on the premises, no merchandise or articles are stored other than inside the principal building;
- E. Creates no disturbing or offensive noise, vibration, smoke, dust, odor, heat, glare, traffic hazard, unhealthy or unsightly conditions;
- F. Is not visibly evident from outside the dwelling except for a sign of three (3) square feet or smaller in size and mounted against a wall of the principal building;
- G. Provides parking commensurate with its occupation type as required in any zoning regulations.

Itinerant, for the purpose of this ordinance, means any person, firm or corporation that does not list property for taxation in the city, who engages in either a temporary or transient business in the city.

Person means any individual, firm, partnership, cooperative non-profit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company or other group or combination acting as a unit, in the singular or plural and the agent or employee having charge or control of a business in the absence of the principals.

Temporary means a period of less than four (4) months.

Transient means the passing from one place to another, including house-to-house, door-to-door or soliciting in the streets, whether on foot or by means of a moving vehicle. (Ord. No. 637, Sec. 4.29.)

4.28.03 Purpose and duration The business license levied by this ordinance is for the purpose of providing such regulation as may be required by the businesses subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. Each license shall be issued for a twelve (12) month period beginning January 1, and shall expire on December 31 of the same year. The provisions of this ordinance and the rates herein shall remain in effect from year to year as amended by City Council. (Ord. No. 637, Sec. 4.30.)

4.28.04 License fee The required license fee shall be paid for each business subject hereto on or before the 15th day of February of each year. A separate license shall be required for each location of business and for each classification of business or business conducted at one location. The fee for a business license shall be Thirty Dollars (\$30.00) per period of licensure. (Ord. No. 637, Sec. 4.31.)

4.28.05 Registration required The owner, agent or legal representative of every business subject to this ordinance, whether listed in the classification index or not shall register the business and make application for a business license on or before the due date of each year, except that a new business or out-of-city business shall be required to have a business license prior to operation within the city. Application shall be on a form provided by the Asst. Treasurer which shall contain the Social Security Number and/or the Federal Employer's Identification Number, the business name as reported on the Arkansas State Income Tax Return, and all information about the applicant and the business deemed necessary to carry out the purposes of this ordinance by the Asst. Treasurer. The applicant shall certify under oath that the information given in the application is true. (Ord. No. 637, Sec. 4.32.)

4.28.06 False application unlawful It shall be unlawful for any person subject to provisions of this ordinance to make a false application for a business license or to give or file or direct the filing of any false information with respect to the license or fee required by this ordinance. Any person guilty of filing a false application or providing an application, which contains false or incorrect information, shall be assessed a fine of not more than Two Hundred Fifty Dollars (\$250.00) for each application submitted by them. (Ord. No. 637, Sec. 4.33.)

4.28.07 Display and transfer

- A. All persons shall display the original business license form issued by the Asst. Treasurer in a conspicuous place in the business establishment at the address shown on the license. A person issued a license hereunder who operates a transient or non-resident business shall carry the license upon his person or in the vehicle used in the business within the city so that it will be readily available for inspection by any authorized city agent or official.

- B. Any change of location of a business must be reported in writing within ten (10) days by the licensee to the Asst. Treasurer prior to the moving of the business, and a license issued hereunder shall be valid at the new address upon such written notification to and approval by the Asst. Treasurer and compliance with all application city zoning, building and other codes and ordinances. The failure to obtain the approval of the Asst. Treasurer for a change of location shall invalidate the license and subject the licensee to prosecution for doing business without a license.
- C. A license shall not be transferable and a transfer of ownership of a business shall be considered a termination of the existing business and the establishment of a new business immediately requiring a new business license purchased at the applicable license fee rate. (Ord. No. 637, Sec. 4.34.)

4.28.08 Administration of ordinance The Asst. Treasurer shall administer the provisions of this ordinance, collect license fees, issue licenses, make or initiate investigations and audits to insure compliance, initiate denial or revocation procedures, report violations to the Police Department and assist in the prosecution of any violations, produce forms, make reasonable regulations relating to the administration of this ordinance, and perform such other duties as may be duly assigned. (Ord. No. 637, Sec. 4.35.)

4.28.09 Inspections and audits For the purpose of enforcing the provisions of this ordinance, the Asst. Treasurer or other authorized agent of the city is empowered to enter upon the premises of any person subject to this ordinance to make inspections. It shall be unlawful for any such person to fail or refuse to allow such inspection. The Asst. Treasurer/Code Enforcement Officer can make inspections of all businesses and/or business license records within the city to insure compliance with this ordinance. (Ord. No. 637, Sec. 4.36.)

4.28.10 Delinquent license fee For non-payment of all or any part of the correct license fee, the Asst. Treasurer or his/her designated agent shall levy and collect a late penalty of twenty-five percent (25%) of the unpaid fee for each month or portion thereof after February 15 of each year until paid. Penalties shall not be waived. If any license fee shall remain unpaid for sixty (60) days after the due date, the Asst. Treasurer shall make a report to the city Police Department and/or the Code Enforcement Officer for appropriate legal action. (Ord. No. 637, Sec. 4.37.)

4.28.11 Notices The Asst. Treasurer shall be required to mail written notices that license fees are due, but if notices are not mailed, there shall be published a notice of the due date in a newspaper of general circulation within the city once each year thirty (30) days prior to the due date in each year. (Ord. No. 637, Sec. 4.38.)

4.28.12 Denial of license

- A. The Asst. Treasurer shall deny a license to an applicant when the application:
 - 1. Is incomplete; or
 - 2. Contains a misrepresentation or false, misleading or evasive statements; or
 - 3. When the activity for which the license is sought is unlawful or constitutes a public nuisance.
- B. Any denial of a business license shall be written with the reasons stated in the denial.
- C. The decision of the Asst. Treasurer shall be subject to appeal to City Council as herein provided. (Ord. No. 637, Sec. 4.39.)

4.28.13 Suspension or revocation When the Asst. Treasurer determines that:

- A. A license has been mistakenly or improperly issued or issued contrary to law; or
- B. A licensee has breached any condition upon which his/her license was issued or has failed to comply with the provision of this ordinance; or
- C. A licensee has obtained a license through fraud, misrepresentation, false or misleading statements, or the suppression of a material fact in the license application; or
- D. A licensee has been convicted of an offense under a law or ordinance regulating business, or an unlawful sale of merchandise or prohibited goods; or
- E. A licensee has engaged in an unlawful activity or nuisance related to the business,

the Asst. Treasurer shall give written notice to the licensee or the person in control of the business within the city by personal service or certified mail that the license is suspended. The notices shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this ordinance. The notice shall also inform the licensee that he has the right to an appeal before City Council. (Ord. No. 637, Sec. 4.40.)

4.28.14 Appeal to City Council

- A. Any person aggrieved by a final assessment or revocation of a business license by the Asst. Treasurer may appeal the decision to City Council by written request stating the reasons therefore filed with the Asst. Treasurer within the ten (10) days after the notice of suspension or revocation of license.
- B. An appeal or a hearing on revocation shall be held by City Council within thirty (30) days after receipt of a request for appeal or service or notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice. City Council shall, by majority vote of members present, render a written decision based on findings of fact and the application of the standards herein and that decision shall be final unless appealed to a court of competent jurisdiction within ten (10) days after service.
- C. No person shall be subject to a prosecution for doing business without a license until the expiration of ten (10) days after notice of denial or revocation which is not appealed or until after final judgment of a District Court upholding denial or revocation. (Ord. No. 637, Sec. 4.41.)

4.28.15 Violations Any person violating any provision of this ordinance shall be deemed guilty of an offense and shall be subject to a fine under general penalty provisions of the city, upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for penalties and costs provided for herein. (Ord. No. 637, Sec. 4.42.)

4.28.16 Out-of-city businesses The license fee for each out-of-city business (itinerant) shall be the same as the fee assessed from businesses within the city. (Ord. No. 637, Sec. 4.44.)

CHAPTER 4.32**PEDDLER LICENSES**Sections:

4.32.01	Peddler's license required
4.32.02	Definitions
4.32.03	Principal permit
4.32.04	Permit for peddlers/solicitors
4.32.05	Prohibition
4.32.06	Penalty

- 4.32.07 Exemptions
4.32.08 Revocation of permit

4.32.01 Peddler's license required Any person who goes upon the premises of any private residence in the city, not having been invited by the occupant thereof, carrying or transporting goods, wares, merchandise or personal property of any nature and offering the same for sale shall be required to have a peddler's license. (Ord. No. 638, Sec. 4.45.)

4.32.02 Definitions The following words, terms and phrases and their derivations, when used in this section, shall have the meanings ascribed to them in the section, except where the context clearly indicates a different meaning:

Charitable activity means any activity represented to be carried on for unselfish, civic or humanitarian motives or for the benefit of others and not for private gain and means, and includes patriotic, philanthropic, social service, health, welfare, benevolent, educational, civic, cultural or fraternal;

Charitable organization means a non-profit organization holding a tax exemption certificate from the Internal Revenue Service pursuant to 501 et seq., and any amendments thereto.

City means city of Green Forest, Arkansas.

Peddler means any person who goes upon the premises of any private residence in the city, not having been invited by the occupant thereof, carrying or transporting goods, wares, merchandise or personal property of any nature and offering the same for sale.

Peddling includes all activities ordinarily performed by a peddler as indicated in the previous paragraph.

Political purpose shall mean any form of communication related to a political issue, a particular candidate to a position or non-partisan office, a political committee, or to a political party;

Principal means the person or other legal entity whose goods, merchandise, personal property or services are being peddled or solicited.

Religious purpose shall mean the use of money or property for the support of a church, religious society or other religious sect, group or order.

Solicitor means any person who goes upon the premises of any private residence in the city, not having been invited by the occupant thereof, for the purpose of taking or intending to take orders for the sale of goods, wares, merchandise or other personal property of any nature for future delivery or for services to be performed in the future.

Solicitation or soliciting includes all activities ordinarily performed by a solicitor as indicated in the previous paragraph. (Ord. No. 638, Sec. 4.46.)

4.32.03 Principal permit No peddling or solicitation shall be conducted within the city without a principal permit being issued. The cost for the principal to obtain a solicitor/peddler's permit is Ten Dollars (\$10.00), and shall be paid to the City Clerk before any peddling or soliciting is conducted within the city. The permit shall expire on December 31 in the year the permit is issued. To obtain a permit, a representative of the principal shall provide a written, signed application stating:

- A. The name, address, telephone number, type of organization, and contact person for the principal applicant;
- B. The nature of the products or services involved;
- C. The proposed method of operation in the city;
- D. A list of persons who will peddle or solicit in the city on behalf of the principal in the city. (Ord. No. 638, Sec. 4.47.)

4.32.04 Permit for peddlers/solicitors In addition to the principal permit, each peddler or solicitor acting for the principal shall also obtain a permit from the City Clerk before peddling or soliciting within the city. The cost to obtain a peddler/solicitor permit is Five Dollars (\$5.00). In applying for the permit, each applicant shall provide the following to the City Clerk:

- A. The name of the principal applicant for whom they are going to act as a peddler or solicitor;
- B. The name, address and telephone number of the person who is going to act as a peddler or solicitor, and in addition, they must also provide photo identification;
- C. A signed statement under oath that the person applying to be a peddler/solicitor has not been convicted of any felonies or any misdemeanors involving theft, sexual offenses or drug offenses;
- D. A criminal background check from the Arkansas State Police which shows that the peddler or solicitor has not been convicted of any felonies or any misdemeanors involving theft, sexual offenses or drug offenses. No person shall be issued a permit as a peddler or solicitor that has been convicted of any of the offenses set out herein. (Ord. No. 638, Sec. 4.)

4.32.05 Prohibition It is unlawful for any solicitor or peddler to:

- A. Peddle or solicit within the city without having a copy of this section on their person, as well as a copy of their permit issued by the City Clerk, as well as photo identification visible, which is provided by the principal, identifying the person peddling or soliciting;
- B. Enter upon any private residence, knock on a door, ring the doorbell or otherwise attempt to gain admittance at the residence when the premises has posted at the entry of the residence a decal or sign bearing the words, "No soliciting/no peddling," "No peddlers," "No solicitors," "No trespassing," or other words of similar import;
- C. Conduct the activities of peddler or solicitor and knock on a door, ring the doorbell, or otherwise attempt to gain admittance at the residence between the hours of 7:00 p.m. and 10:00 a.m. during regular standard time, and between the hours of 8:00 p.m. and 10:00 a.m. during Daylight Savings Time;
- D. Remain at the private residence when requested to leave, or to otherwise conduct business in a manner which a reasonable person would find obscene, threatening, intimidating or abusive;
- E. Make any false or misleading statements about the product or service being sold, including untrue statements of endorsement;
- F. Claim to have the endorsement of the city solely based on the city having issued a permit to that person;
- G. Fail to disclose his or her name and the name of the principal whom he represents at the outset of the initial conversation;
- H. Fail to leave the premises or residence after having been asked by the owner or occupant thereof to do so. (Ord. No. 638, Sec. 4.49.)

4.32.06 Penalty Any violation of this section shall be deemed a nuisance and punishable by a fine of One Hundred Dollars (\$100.00). (Ord. No. 638, Sec. 4.50.)

4.32.07 Exemptions The following shall be exempt to all provisions of this section:

- A. Officers or employees of the city, county, state or federal government, or any subdivision thereof when on official business;

- B. Charitable activities on behalf of a charitable organization or activities related to a religious purpose or political purpose. (Ord. No. 638, Sec. 4.51.)

4.32.08 Revocation of permit Any permit issued pursuant to the provisions of this section may be suspended or revoked for good cause by the city Code Enforcement Officer or city police officer. Good cause for such suspension or revocation shall include any violation of this section or any other reasons for suspensions or revocation as set out in the code of ordinances of the city, and said violations are hereby incorporated herein by reference. Any revocation of a permit may be appealed to the City Council, and the Council shall determine whether the revocation of the permit shall stand. (Ord. No. 638, Sec. 4.52.)