

**CITY OF BARDSTOWN, KENTUCKY
REGULAR CITY COUNCIL MEETING MINUTES
11-28-2017
7:00 PM**

The City Council met in regular session in the Council Chambers with Mayor Heaton and the following Councilmen:

Councilman Buckman
Councilman Copeland
Councilman Dones
Councilman Kelley
Councilman Sheckles
Councilman Williams

Others present: City Attorney Tim Butler, City Clerk Mary Riley, HR Director/Risk Manager Greg Ashworth, Interim Fire Chief Charles Montgomery, Assistant Police Chief Kevin Thompson, Assistant Police Chief Joe Seeyle, Nelson County Gazette Reporter Jim Brooks, Kentucky Standard Reporter Randy Patrick, reporter from PLG-TV and Citizen Pat Whelan.

RECOGNITION OF GROUPS OR INDIVIDUALS

Mayor Heaton addressed the members of the Bardstown Fire Department who participated in the Scott Firefighter World Combat Challenge on 10/28/17 in Louisville, KY where firefighters from 46 states and 14 countries competed. The City's four-member team consisting of Jared Gant, Mike Alden, Derrick Gribbins and Ernie Pyle came in 61 out of 250 teams, and even beat their personal record by 10 seconds in the finals. The Mayor offered his congratulations and the group received a round of applause.

HISTORICAL REVIEW BOARD

The following recommendations from the Bardstown Historical Review Board were presented:

- (a) COA-17-65 AMENDED. Edward Seay, Applicant/Owner - 111 West John Fitch Ave.
Recommendation: Approval to install the proposed deck and patio.
- (b) COA-17-95. American Legion Post 121, Applicant/Owner - 206 West Broadway Street.
Recommendation: Approval to install the proposed fence with the following condition:
Condition: That the fence may be stained a light brown, be left to age naturally, or be painted white. The final color will be presented to the preservation coordinator for approval.
- (c) COA-17-96 Design Committee of Bardstown Main Street program, Applicant, Owner City of Bardstown and Nelson County requests to install six ashtray receptacles and one pet waste system downtown.
Recommendation: Approval to install the astray receptacles and pet waste system at the proposed locations downtown with the following condition:
Condition: That the bands for all items attached to the lampposts will be painted black.

COUNCILMAN WILLIAMS MOVED TO ACCEPT THE RECOMMENDATIONS FROM THE HISTORICAL REVIEW BOARD FOR COA #17-65, #17-95 AND #17-96 WITH THE CONDITIONS SET FORTH BY THE HRB. THE MOTION WAS DULY SECONDED BY COUNCILMAN BUCKMAN AND CARRIED BY A VOTE OF 6 TO 0.

MINUTES

THE MINUTES OF THE REGULAR COUNCIL MEETING HELD ON 11-14-2017 WERE APPROVED BY UNANIMOUS CONSENT.

SECOND READING OF ORDINANCE B2017-16 TELECOMMUNICATIONS FRANCHISE

City Attorney Butler read the following summary:

SUMMARY OF ORDINANCE NO. B2017-16

AN ORDINANCE CREATING AND ESTABLISHING FOR BID A NON-EXCLUSIVE TELECOMMUNICATIONS (OR RELATED NON-CABLE) FRANCHISE FOR THE PLACEMENT OF FACILITIES FOR THE GENERATION, TRANSMISSION, DISTRIBUTION AND SALE OF TELECOMMUNICATIONS OR RELATED NON-CABLE SERVICES WITHIN THE PUBLIC RIGHTS-OF-WAY OF CITY OF BARDSTOWN FOR A TEN (10) YEAR DURATION.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF BARDSTOWN, KENTUCKY, AS FOLLOWS:

Section 1 - Creates a non-exclusive franchise for Telecommunications Systems in the City of Bardstown (“Bardstown”).

Section 2 – Sets forth that Bardstown’s existing ordinances are incorporated herein.

Section 3 - Sets forth definitions. The following definitions relating to franchise fees are set in full:

“ “Franchise Fee” means for the purposes of this Ordinance any fee that may be imposed by the Government on Grantee as compensation for Grantee’s use of public rights-of-way and roads. Use of this definition in this Ordinance is without prejudice to any rights Grantee or Government may have under Federal and Kentucky law as they may be amended.”

““Gross Revenue” means after adjustment for the net write-off of uncollectible accounts and for local, state and federal government entities, that claim exemption from Franchise Fees levied by the Government on Telecommunications Services they purchase, any and all revenues derived by Grantee within the City of Bardstown from Grantee's Telecommunications System, including, but not limited to: revenues from the sale of and use of Telecommunications Services originating or terminating in the City of Bardstown; revenues charged to or attributable to a circuit location in the City of Bardstown, regardless of where the circuit is billed or paid; revenues from the use, rental, or lease of Grantee's operating Facilities within the City of Bardstown, revenues from the provision of any and all products, services, or charges (including installation, maintenance and service charges) and revenues from any leases or Indefeasible Right of Use interests (“IRU”) of any portion of Grantee's Telecommunications System within the City of Bardstown. "IRU" or "Indefeasible Right of Use" means any form of acquired capital interest in Grantee's Telecommunications System in which the holder possesses a right to use the Telecommunications System but not the right to control, maintain, construct or revise the Telecommunications System. “Gross Revenue” shall not include revenues received from the provision of Telecommunication Services which are exempt from taxation under local, state, or federal law.”

““Minimum Annual Franchise Fee" means \$15,000 in the first year of the Grantee’s franchise, and shall increase by \$1,000 annually.”

Section 4 - Sets forth information to be including in applications for franchises. It states: “Applications shall be accompanied by a non-refundable application fee of five thousand dollars (\$5,000) payable to the Government [City of Bardstown].”

Section 5 through 13 Sets forth the following: rights and privileges granted to Grantee, standards for Telecommunications Systems, requirements regarding moving permits and tree trimming; requirements regarding project performance bond(s), indemnification provisions, insurance requirements, requirements regarding non-discrimination and affirmative action, requirements for transfer of control and general rate cases and that the franchise shall be for an initial ten year period.

Section 14 - Section 14 states:

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- (a) If, after the Grantee is provided the opportunity to appear and present evidence before the Mayor or his or her designee, the Mayor finds that the Grantee has violated any of the following provisions of this Ordinance, the following penalties shall be recoverable. The decision of the Mayor or his or her designee shall be the final administrative decision and shall be in writing and provide the basis for the decision. The decision may be appealed to a court of competent jurisdiction.
 - (1) For failure to complete or remove any construction project by no later than the ending term of any franchise awarded pursuant to this Ordinance or any extension thereof, the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues; in lieu of a penalty, the Grantee may post a performance bond, letter of credit or other surety acceptable to the Government in an amount sufficient to complete such construction projects. This section shall not apply to any projects for which performance bonds or other surety is already pledged.

- (2) For failure to provide data and reports requested by the Government and as required by this Ordinance the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.
- (3) For failure to pay a permit fee or franchise fee when due pursuant to local law, the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.
- (b) If the Grantee fails to comply within thirty (30) days of any Council resolution directing compliance with any other provisions of this Ordinance, the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues. The decision of the Council may be appealed to a court of competent jurisdiction.
- (c) The Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the Grantee's performance or to seek the Grantee's compliance with any one or more of such terms or conditions. Payment of penalties shall not excuse non-performance under this Ordinance. The right of the Government to seek and collect penalties as set forth in this section is in addition to its right to terminate and cancel as set forth in Section 16 of this Ordinance.”

Sections 15 through 20 Set forth the following: requirements regarding maintenance of the Telecommunication System, Bardstown’s right to terminate and cancel the franchise, requirements in the event of a foreclosure or judicial sale, Bardstown’s rights after the appointment of a receiver or trustee, requirements to advertise for bids and the bidding process.

Section 21 - Section 21 reads in full as follows:

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- (a) During any period of time during which the Government opts to forego collecting a Franchise Fee in lieu of participating in the Multichannel Video Programming and Service Tax scheme under KRS 136.600 et seq., Grantee shall not be required to pay Franchise Fees. If at any time the Government opts to exercise its constitutional right to collect Franchise Fees, Grantee’s first Franchise Fee payable under this chapter shall be paid to the Government sixty (60) days after the Government gives notice to Grantee that the Government has opted to exercise its constitutional right to collect Franchise Fees.
 - (b) The Telecommunications Excise Tax distribution from the state is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, permit fees and business license taxes are not waived and remain applicable as provided by law to the extent they are not Franchise Fees. Additionally, the Government may at any time impose any fees or taxes consistent with state or federal law, including, but not limited to property taxes, and occupational license fees.
 - (c) If the Government exercises its constitutional right to collect Franchise Fees , Grantee shall pay an annual fee to the Government, which must be the greater of either: (a) the Minimum Annual Franchise Fee; or (b) an amount equal to either five percent (5%) of Grantee's Gross Revenues if Grantee provides Telecommunications Service to Customers within the City of Bardstown or if Grantee does not provide Telecommunications Service to Customers within the City of Bardstown, an amount equal to two dollars (\$2.00) per lineal foot of Facilities plus fifteen hundred dollars (\$1,500) per antenna or small cell.
 - (d) Grantee's first Minimum Annual Franchise Fee payable under this Ordinance shall be paid to the Government forty-five (45) days after the law is changed to allow the collection of Franchise Fees on Telecommunications Services. Such payment will be prorated for the remaining calendar year (rounded to the nearest month) through December 31. Thereafter, Grantee shall pay each Minimum Annual Franchise Fee on or before April 15, and Grantee's Minimum Annual Franchise Fee payment will apply to the current calendar year (January 1 through December 31). Any Minimum Annual Franchise Fee paid to the Government will be credited towards Grantee's Franchise Fee for that calendar year. In order to avoid penalization, the Government will notify the Grantee in writing at such time as it believes that it is allowed to assess franchise fees due to

a change in the law. If the Government fails to notify the Grantee, the Grantee shall be relieved of its obligation to any applicable penalty but shall still be obligated to pay any outstanding franchise fees.

- (e) Gross Revenue based Franchise fee payments to the Government shall be computed based on Grantee's Gross Revenues from each calendar year quarter period (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October. 1 through December 31) and paid on or before the forty-fifth (45th) day following each calendar quarter period during the term of a franchise created under this Ordinance.
- (f) Facilities based Franchise Fee payments to the shall be computed based on Grantee's lineal foot of Facilities in the City of Bardstown as of January 1 of each calendar year and paid on or before April 15th of calendar year during the term of a franchise created under this Ordinance.
- (g) Payment not received by the Government by the due date shall be assessed interest equal to one percent (1%) per month. Interest shall be compounded daily. Interest shall be due on the entire late payment from the date on which the payment was due until the date on which the Government receives the payment.
- (h) Prior to making each payment to the Government, Grantee shall file with the Government a written report containing an accurate statement in summarized form, as well as in detail, of its calculation of the amount of the payment, verified by an officer or other authorized representative of Grantee, setting forth its Gross Revenues according to their accounting subdivisions, and any deductions claimed for the period upon which the payment is computed. Such reports shall be in form satisfactory to the Government.
- (i) If any Franchise Fee is owed to the Government, upon reasonable notice, the Government shall have the right to inspect the Grantee's income records, the right to audit and to re-compute any amounts determined to be payable under this agreement; provided, however, that such audit shall take place within twelve (12) months following the close of each of the Grantee's fiscal years. If, as a result of such audit or review, the Government determines that Grantee has underpaid its fees to the Government in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, Grantee shall reimburse the Government for all expenses incurred as a result of an audit or review and such payments shall be paid within the thirty (30) days following written notice to the Grantee by the Government, which notice shall include a copy of the audit report and copies of all invoices for which the Government seeks reimbursement.
- (j) If any Franchise Fee is owed to the Government, in the event that any Franchise Fee payment or recomputed amount is not made to the Government on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of 2% over prime interest rate.
- (k) The Government reserves the right to require the Grantee to collect any consumer or other tax or other fee that may be imposed by the Government, the Commonwealth of Kentucky, or the federal government on Telecommunications Services.
- (l) Notwithstanding the above, the Grantee shall be required to pay the Government for an annual general permit in the amount of twelve thousand five hundred dollars (\$12,500.00). This payment is intended to adequately compensate the Government for its permitting and inspection of the Grantee's construction activities in the Rights-of-way. Effective commencing on the first anniversary of any franchise granted pursuant to this Ordinance and continuing on one-year each anniversary thereafter, the annual general permit fee with respect to the ensuing one-year period shall be increased by three percent (3%).
- (m) Notwithstanding the above, the Grantee shall be required to pay the Government an amount intended to adequately compensate it for its permitting and inspection of the Grantee's construction activities in the Rights-of-way pursuant to the Code and all

attorney's fees that the Government may incur relating to the franchising process, including but not limited to any attorneys' fees incurred relating granting of the franchise and any transfer, renewal or modification of the franchise. "

Section 22 through 32 Set forth the following: additional requirements regarding a Telecommunication System, letter of credit and performance bond requirements, requirements regarding discontinuing use of facilities, requirements regarding offers of payment, provisions regarding forfeiture of a franchise, the laws of the Commonwealth of Kentucky shall govern, obligations to comply with the Ordinance, requirements regarding designation of a local agent, no contractual relationship is created in favor of a third party, if any portion of the Ordinance is unconstitutional or otherwise invalid, such infirmity shall not affect the Ordinance's validity and the franchise created by this Ordinance shall become effective when the bid for it is accepted by the Council.

This summary was certified by Timothy Butler, City Attorney.

The complete text of the ordinance is available from the City Clerk at 220 North 5th Street, Bardstown, KY.

COUNCILMAN KELLEY MOVED TO ADOPT ORDINANCE B2017-16 AS READ IN SUMMARY. THE MOTION WAS DULY SECONDED BY CONCILMAN DONES.

THE MAYOR CALLED THE ROLL AND THE FOLLOWING VOTED:

COUNCILMAN KELLEY	-	AYE
COUNCILMAN COPELAND	-	AYE
COUNCILMAN BUCKMAN	-	AYE
COUNCILMAN WILLIAMS	-	AYE
COUNCILMAN SHECKLES	-	AYE
COUNCILMAN DONES	-	AYE

MAYOR HEATON THEN DECLARED ORDINANCE NO. B2017-16 ADOPTED. IT WILL BE RECORDED IN ORDINANCE BOOK NO. 10, PAGE NO. _____.

SECOND READING OF ORDINANCE B2017-17 PAWNBROKERS: CHAPTER 110

City Attorney Butler read the following:

ORDINANCE NO. B2017-17

AN ORDINANCE AMENDING AND ADOPTING AS AMENDED AN ORDINANCE CONTAINED IN THE BARDSTOWN CODE OF ORDINANCES, CHAPTER 110: PAWNBROKERS.

THE CITY COUNCIL OF THE CITY OF BARDSTOWN, KENTUCKY DOES HEREBY ORDAIN THAT Section 110.02 and Section 110.07 be amended as follows:

CHAPTER 110: PAWNBROKERS

§ 110.02 LICENSE REQUIRED.

No persons, firm or corporation shall engage in the business of pawnbroker in the city, without first having obtained a license permitting them to engage in such business, which license shall be granted only by the City Council at a regular meeting of the Council. **Licenses are valid for a five (5) year period and are renewable. All activities covered by this license shall occur on the property/business location specified on the license and during normal business hours specified on the license. As a condition for said license, all pawnbroker establishments shall install, use and maintain a video surveillance system reasonably installed so as to record all transactions, including persons involved in those transactions. Video records shall be retained for 30 days after the date of the transaction.** (Ord. passed 5-13-58) Penalty, see § 110.99

§ 110.07 DAILY REPORTS.

Every pawnbroker in the city shall, by 11:00 a.m. of each day, make available to the chief of police of the city a **full**, true and correct written **or electronic** report of all goods received by him, whether by pawn or purchase, during the 24 hours preceding each report; the report shall describe the goods as accurately as practicable. **Providing or filing incomplete, false or materially inaccurate reports shall be considered a violation of this ordinance.** The chief of police shall ~~[furnish blanks to the pawnbroker]~~ **determine the format and manner of submittal** for the report required by this section. (Ord. passed 5-13-58) Penalty, see § 110.99

All ordinances or parts of ordinances in conflict are hereby repealed to the extent of that conflict. This ordinance shall be in full force and effect following publication as required by law.

This summary was certified by Timothy Butler, City Attorney.

The complete text of the ordinance is available from the City Clerk at 220 North 5th Street, Bardstown, KY.

COUNCILMAN KELLEY MOVED TO ADOPT ORDINANCE B2017-17 AS READ IN SUMMARY. THE MOTION WAS DULY SECONDED BY CONCILMAN BUCKMAN.

THE MAYOR CALLED THE ROLL AND THE FOLLOWING VOTED:

COUNCILMAN KELLEY	-	AYE
COUNCILMAN COPELAND	-	AYE
COUNCILMAN BUCKMAN	-	AYE
COUNCILMAN WILLIAMS	-	AYE
COUNCILMAN SHECKLES	-	AYE
COUNCILMAN DONES	-	AYE

MAYOR HEATON THEN DECLARED ORDINANCE NO. B2017-17 ADOPTED. IT WILL BE RECORDED IN ORDINANCE BOOK NO. 10, PAGE NO. _____.

MUNICIPAL ORDER M2017-15 CITY VEHICLE USE AND ASSIGNMENT POLICY

City Attorney Butler read the following:

MUNICIPAL ORDER NO. M2017-15

CITY VEHICLE USE AND ASSIGNMENT POLICY

MUNICIPAL ORDER AMENDING THE CITY VEHICLE USE AND ASSIGNMENT POLICY FOR THE CITY OF BARDSTOWN ORIGINALLY ESTABLISHED IN MUNICIPAL ORDER NO. M2016-21.

WHEREAS: The City of Bardstown has a City Vehicle Use and Assignment Policy that is in need of updating to reflect current employee recruiting methods; and

WHEREAS: The current policy prohibits employees from using their assigned City vehicle to travel to and from their residence outside of Nelson County; and

WHEREAS: The City of Bardstown’s Police Department recognizes the current policy limits the ability to actively recruit trained and experienced Police Officers from outside the Nelson County area.

NOW, THEREFORE, BE IT ORDERED by the City Council of Bardstown, Kentucky, that the City Vehicle Use and Assignment Policy attached hereto, be adopted in full to represent the true and accurate guidelines for use of City vehicles for employees of the City of Bardstown.

COUNCILMAN WILLIAMS MOVED TO APPROVE MUNICIPAL ORDER M2017-15 CITY VEHICLE USE AND ASSIGNMENT POLICY. THE MOTION WAS SECONDED BY COUNCILMAN SHECKLES AND CARRIED BY A VOTE OF 6 TO 0.

CITY COUNCIL MEMBER COMMENTS

Councilman Copeland shared her experience at the Diversity Scholarship Conference she attended in Washington, DC. The focus was on social justice and activism in preservation. She described a HOPE program designed to bring more youth into the area of building rehabilitation and preservation, and there is a new division created for underrepresented communities, such as the African-American community. She encouraged the Council and community to participate in getting the local youth involved in preservation-related activities.

ANNOUNCEMENTS

Mayor Heaton announced the anniversaries for the months of September, October and November for the following City employees, and thanked them for their service to the City and community:

1. Jeremy Kyle, Public Works – 5 Years
2. Josh Downs, Public Works – 5 Years
3. Travis Hamilton, Public Works – 5 Years
4. Renee Maupin, Cable – 5 Years
5. Ernie Pyle, Fire Department – 10 Years
6. Bobbi Young, Public Works – 10 Years
7. Charlotte Lyvers, Jerry Riley Wastewater Plant – 15 Years
8. Rick Workman, Cable – 15 Years
9. Don Wilson, Water Treatment Plant – 40 Years

CEMETERY DEEDS

THE CEMETERY DEED FOR JENNIE L. RITCHIE AND DONNA HASTE WERE APPROVED BY UNANIMOUS CONSENT.

ADJOURNMENT

COUNCILMAN SHECKLES MOVED TO ADJOURN THE MEETING AT 7:43 PM. THE MOTION WAS DULY SECONDED BY COUNCILMAN BUCKMAN AND CARRIED BY A VOTE OF 6 TO 0.

CITY OF BARDSTOWN

J. Richard Heaton, Mayor

ATTEST:

Mary Riley, City Clerk