

ORDINANCE NO. 7

AN ORDINANCE GRANTING THE CENTRAL LINCOLN PEOPLE'S UTILITY DISTRICT, A MUNICIPAL CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO OPERATE AND A PERMIT TO CONSTRUCT, OPERATE AND MAINTAIN POLE LINES ALONG THE STREETS AND OTHER PUBLIC WAYS IN DUNES CITY, LANE COUNTY, OREGON; SETTING THE PRICE OF SUCH FRANCHISE; AND DECLARING AN EMERGENCY.

WHEREAS, the Central Lincoln People's Utility District, a Municipal Corporation, is an operating utility engaged in the distribution of electric power in Dunes City and other adjoining areas; and

WHEREAS, the said Central Lincoln People's Utility District has a policy whereby said District pays to incorporated cities within its service area, 2% of the District's gross revenue from electric service (excepting only industrial services and City services) rendered within the corporate limits of any such city during the District's preceding fiscal year for a 20-year franchise granting the said District the right to maintain and operate its electric system and facilities within such city, provided that the amount of said tax in any current fiscal year shall in any event not exceed such city's street lighting bill from the District during such year; and

WHEREAS, Dunes City is entering into a Street Lighting Agreement with the said Central Lincoln People's Utility District, and the granting of such a franchise will effect a saving to the said Dunes City and will permit the installation of street lighting within said City;

NOW, THEREFORE,

THE PEOPLE OF DUNES CITY DO ORDAIN AS FOLLOWS:

Section 1. That Central Lincoln People's Utility District, a Municipal Corporation, its successors and assigns, under the terms and conditions, and restrictions as hereinafter set out, is hereby granted for a period of twenty (20) years from the date hereof, the right and privilege to operate in Dunes City and to locate, construct, reconstruct, operate and maintain pole lines with all

necessary poles, wires and appurtenances, (including signal or control circuits) for the purpose of transmitting, distributing and delivering electric power on, over and along the public streets, alleys and public grounds of Dunes City, including the right to lay all or any part of such lines using cables in underground conduits if such District so elects, and further including the right to clear trees and brush from street rights of way provided such debris is properly disposed of.

This grant and franchise in addition to other consideration hereinafter set forth, is granted for the purpose of insuring to the City and the people of Dunes City, electrical service of a standard acceptable in the utility industry. Should the Central Lincoln People's Utility District fail in its obligation to provide electrical service comparable to accepted standards of service in the utility industry for sixty (60) days in any one period, through its own fault or neglect, this Ordinance may be revoked by the said Dunes City first giving written notice to the Central Lincoln People's Utility District of its intention to do so, which said notice shall enumerate the instances wherein said Central Lincoln People's Utility District has not furnished acceptable service and should such service defects not then be corrected within thirty (30) days from such notice, the said Dunes City may by Ordinance revoke this said franchise. Provided, however, that no liability shall exist to furnish electric service, nor shall the said Central Lincoln People's Utility District be considered in default if the District is prevented from fulfilling its obligation by government action, acts of God, or the public enemy or any cause or causes not under the control of the said Central Lincoln People's Utility District.

Section 2. It shall be lawful for the said Central Lincoln People's Utility District, its successors and assigns, to make all needful excavations in any of such streets, alleys, avenues, thoroughfares and public highways in said City for the purpose of placing, erecting, laying and maintaining poles, or

other supports or conduits for said wires or cables or repairing, renewing or replacing the same. Said work shall be done in compliance with the necessary rules, regulations, ordinances or orders, which may, during the continuance of this franchise, be adopted from time to time by Dunes City.

Section 3. Whenever the Central Lincoln People's Utility District, its successors and assigns, shall disturb any of the streets for the purpose aforesaid, it or they shall restore the same to good order and condition as soon as practicable without unnecessary delay, and, failing to do so, Dunes City shall have the right to fix a reasonable time within which such repairs and restoration of streets shall be completed, and upon failure of such repairs being made by said District, its successors and assigns, the said City shall cause such repairs to be made at the expense of said Central Lincoln People's Utility District, its successors and assigns.

Section 4. That said District shall at its sole expense remove poles, conduits and other appurtenances and relocate same when requested in writing by the Common Council of Dunes City so to do on account of changing traffic requirements, construction or relocation of roadways.

Section 5. That all construction and installations made by the District shall be in accordance with recognized standards and shall comply with all Federal and State safety requirements.

Section 6. That the District shall have the right to have telephone and telegraph lines and/or television distribution lines attached to its poles and facilities, provided same meets with the approval of the telephone or telegraph company or companies, or the television company or companies, (as the case may be) operating in the said Dunes City.

Section 7. Dunes City police and/or fire department signal wires may be attached to the District's poles and fixtures to the extent that space is available for same as determined by the District. No such installation shall be made

except on written request from the City, and any such installation or maintenance or repair of same shall be made by the District with the cost to be borne by the City.

Section 8. That all poles, wires and facilities erected or used by the District shall be erected or placed so as not to interfere with ordinary traffic through such streets and alleys and provided that whenever it shall be necessary for any person to move along or across any of said streets or alleys any vehicle or structure of such height or size as to interfere with any poles, wires or facilities so erected, the District shall, upon receiving seven (7) days notice thereof, temporarily remove such poles, wires or facilities from such places as must necessarily be crossed by such vehicle or structure and in such event, the expenses of such removal and replacement shall be borne by the person requesting same. Dunes City shall cooperate in moving the travelled portion of streets or roadways that are so located as to threaten damage to the District's poles or installations where such poles or installations are properly placed as regards property and street lines, and in accordance with any City ordinances appertaining thereto.

Section 9. That said District shall indemnify and save harmless Dunes City from all damages which may be awarded against said City in favor of any person or persons, firm or corporation, resulting from any act or thing done by said District by virtue of the authority and consent herein granted.

Section 10. In consideration of the rights, privileges, and franchises hereby granted, said grantee, Central Lincoln People's Utility District, its successors and assigns, shall annually during the term of said franchise, pay to Dunes City, two per cent (2%) of its gross revenue from electric services (excepting only industrial services and City services) rendered within the corporate limits of Dunes City during the preceding fiscal year, provided that such annual payment shall in any event not exceed the District's annual

street lighting billings to Dunes City during the current fiscal year in which such payment is made. Payments will be made monthly by the District to Dunes City in an amount equal to one-twelfth (1/12) of the annual amount due the City as determined from said gross revenue formula, and with the amount to be paid in any one month not to exceed the amount of the City's street lighting bill for that month. If for any month, during any fiscal year, the City's street lighting bill is less than the amount as determined by the gross revenue formula, and later in the same fiscal year the City increases its street lighting bills by increased lighting, appropriate adjustment shall be made by the District. This franchise shall be effective from the 1st day of the month in which this ordinance is adopted and street lighting system installed, and payments as herein provided shall commence in said month. Payments in the first and last years of the term of said franchise shall be prorated on the basis of the number of months of the fiscal year in which this said franchise is in effect. Payments as herein provided and as made by the District to Dunes City, will be accepted by Dunes City from the District not only as payment for said franchise but also in payment of any license, privilege or occupation tax or fee for revenue or regulation or for any other purpose now or hereafter to be imposed by Dunes City upon the District during the term of this Franchise. And, provided the District accepts this franchise and makes said payments, then Dunes City will not, during the term of this franchise, require the District to make any further payment to Dunes City for any license, privilege or occupation tax or fee.

Section 11. This franchise is granted with the understanding and on the condition that should the said Central Lincoln People's Utility District hereafter and while this said franchise is in full force and effect grant or give any city or municipal corporation served by said District, any consideration or pay in excess of that herein provided for, that the said Dunes City shall be entitled to similar consideration or pay and this franchise shall be amended to so provide.

Section 12. The Central Lincoln People's Utility District shall within thirty (30) days from the date hereof, file in the office of the Recorder of Dunes City, its written acceptance of the franchise, rights and privileges by this ordinance granted, as well as the obligations herein imposed on said District, and the failure of said District to file such written acceptance within said period of time shall be held to be an abandonment and rejection of all franchise rights and privileges granted by this ordinance, and this ordinance shall thereupon be null and void.

Section 13. That neither the action of the Central Lincoln People's Utility District in requesting this ordinance nor the action of Dunes City in respect to this ordinance shall be construed as having any bearing on the question as to whether or not the said Central Lincoln People's Utility District as a Municipal Corporation has an inherent right as such a corporation to the privileges herein granted by said City.

Section 14. Whereas the proper regulation of utilities operating within Dunes City is essential to the public safety and to the health and welfare of the citizens of Dunes City, an emergency is hereby declared to exist and this ordinance shall take effect and be in full force and effect from and after its adoption by the council and approval thereof by the Mayor.

Passed by the Common Council this 1st day of June, 1964.

Approved and signed by the Mayor this _____ day of _____, 1964.


Mayor

ATTEST:


City Recorder