

ORDINANCE NO. 20 , Series 2013  
INTRODUCED BY: MAYOR PRO TEM STEVE KRACHA

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE,  
COLORADO, APPROVING A NON-EXCLUSIVE FRANCHISE AND  
FRANCHISE AGREEMENT WITH THE PUBLIC SERVICE COMPANY  
OF COLORADO, D/B/A XCEL ENERGY, TO ALLOW THE USE OF  
CITY STREETS FOR THE PROVISION OF ELECTRIC AND GAS UTILITY  
SERVICE TO THE CITY AND ITS RESIDENTS**

WHEREAS, pursuant to the provisions of Section 14.2 of the Lafayette Charter, the Public Service Company of Colorado holds a non-exclusive franchise for the use of City rights-of-way in order to provide gas and electric utilities to the City and the residents of the City; and

WHEREAS, the current franchise with the Public Service Company of Colorado will expire on November 2, 2013; and

WHEREAS, the City and the Public Service of Colorado (d/b/a/ Xcel Energy) (“PSCO”) have negotiated a new franchise agreement providing for the non-exclusive use of the City rights-of-way for a period of 20 years and providing for a franchise fee payable to the City equal to 3% of Public Service Company’s gross revenues from the sale of gas and electric services within the City, a copy of said proposed agreement, being attached hereto as Exhibit A; and

WHEREAS, PSCO has filed with the City Clerk its unconditional acceptance of all terms of the Franchise Agreement, as required by Section 14.2 of the Lafayette Charter; and

WHEREAS, City Council conducted a public hearing on the proposed franchise on August 20, 2013; and

WHEREAS, the question of whether the City should grant a franchise to the Public Service Company of Colorado has been set for an election on November 5, 2013, as required by Section 14.2 of the City of Lafayette’s Home Rule Charter; and

WHEREAS, the City Council wishes to approve the proposed Franchise Agreement in the form substantially attached hereto, said approval being conditioned on and subject to the authorization for the franchise by the electorate at the November 5, 2013 election.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:**

Section 1. A franchise permitting the use of City rights-of-way by the Public Service Company of Colorado (d/b/a/ Xcel Energy) in accordance with the “Franchise Agreement,” in the form substantially as attached hereto as Exhibit A is approved, conditioned on and subject to approval of the franchise by the electorate of the City of Lafayette at the November 5, 2013 election.

Section 2. Upon the approval of the proposed franchise by the City of Lafayette electorate at the November 5, 2013 election, the Mayor is authorized to execute the Franchise Agreement in the form substantially as attached hereto as Exhibit A.

Section 3. In the event that the electorate does not approve the grant of the franchise to the Public Service Company of Colorado at the November 5, 2013 election, this ordinance shall be null and void.

Section 4. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 5. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 6. The repeal or modification of any provision of the Code of Ordinances of Lafayette, Colorado by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 7. This ordinance is deemed necessary for the protection of the health, welfare, and safety of the community.

Section 8. This ordinance shall become effective upon the latter of the 10<sup>th</sup> day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 6TH DAY OF AUGUST 2013.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE 20TH DAY OF AUGUST, 2013.

CITY OF LAFAYETTE, COLORADO

---

Carolyn D. Cutler, Mayor

ATTEST:

APPROVED AS TO FORM:

---

Susan Koster, CMC  
City Clerk

---

David S. Williamson, City  
Attorney