

ORDINANCE NO. 82-0-368

Ordinance No. 82-O-368 deleted in its entirety by Ordinance No. 02-O-555, effective December 25, 2002.

AN ORDINANCE GRANTING A 20-YEAR FRANCHISE TO COOS-CURRY ELECTRIC COOPERATIVE, INC., FOR THE OPERATION OF AN ELECTRIC POWER TRANSMISSION DISTRIBUTION SYSTEM WITHIN THE CITY OF BROOKINGS; PRESCRIBING THE TERMS, CONDITIONS AND MANNER OF THE ACCEPTANCE OF SUCH FRANCHISE; REPEALING ORDINANCE NO. 167; AND DECLARING AN EMERGENCY. [December 14, 1982]

Sections:

Section 1.	Repeal of Ordinance No. 62-O-167.
Section 2.	Grant of 20-year franchise to Coos-Curry Electric Cooperative, Inc.
Section 3.	Terms and conditions of franchise.
Section 4.	Cooperative to furnish street lights without charge.
Section 5.	Location of equipment.
Section 6.	Repairs to be responsibility of Cooperative.
Section 7.	City to be held harmless.
Section 8.	Cooperative to abide by ordinances and Oregon State Statutes.
Section 9.	City to retain all rights and remedies.
Section 10.	Franchise to be exclusive.
Section 11.	Acceptance of franchise.
Section 12.	Terms of renegotiation of franchise.
Section 13.	[Emergency clause.]

The city of Brookings ordains as follows:

**Section 1. Repeal of Ordinance No. 62-O-167.
Ordinance No. 62-O-167 of the city of Brookings (hereinafter referred**

to as "City") is hereby repealed; said repeal effective on the date of this ordinance's passage. The respective claims of the city of Brookings and Coos-Curry Electric Cooperative, Inc. (hereinafter referred to as "Cooperative"), under said Ordinance No. 62-O-167 shall be settled between said parties as of the date that the Cooperative shall have accepted the franchise herein provided in this ordinance, said acceptance being in written form provided the City by a duly authorized resolution of the Cooperative's governing board.

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Section 2. **Grant of 20-year franchise to Coos-Curry Electric Cooperative, Inc.** There is hereby granted unto the Cooperative a cooperative corporation organized under the laws of the state of Oregon, upon the terms and conditions hereinafter set forth, the right, privilege and franchise of installing, owning, operating, and maintaining an electric power service transmission and distribution system by means of poles, conduits, wires, cables, and other equipment or appliances in, upon, over, under and along the streets, alleys or other public places within the corporate limits of the city of Brookings for a period of 20 years from the date of the enactment of this ordinance.

Section 3. **Terms and conditions of franchise.** During the period of this franchise the City shall not levy upon or exact from the Cooperative any license fee, franchise or privilege tax, or other charges, the consideration stated hereinbelow being in lieu of all such taxes, license fees or charges.

Section 4. **Cooperative to furnish street lights without charge.** In consideration of the granting of said franchise, the Cooperative shall furnish the City, without charge, 116 street lights with wattage not to exceed _____ watts, including installation, maintenance, replacement of bulbs, and electric energy for operation of same. It is understood that more than these numbers of street lights now are in operation within the City; that the City shall designate the 116 lights to be furnished pursuant to the terms hereof, and the remaining lights and all additional lights installed hereafter in excess of 116 shall be upon the customary contractual basis; provided however, that the said 116 lights are furnished

based on a theoretical population of the City of 3,490 persons, then and at that a time, the Cooperative shall furnish one additional light as the city may designate for each increase of 30 persons over said theoretical population of 3,490 persons.

Section 5. **Location of equipment.** The Cooperative shall advise the city engineer and city manager of the City of the proposed location of any new, substitute or replacement poles, conduits, wires, cables or other equipment not less than five days prior to commencement of work thereon or installation or relocation pertinent thereto; and further, the city engineer or city manager may require reasonable changes in proposed locations for the purpose of protecting public health, safety, welfare and traffic.

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Section 6. **Repairs to be responsibility of Cooperative.** All openings or breaks in public street, thoroughfares, alleys or the like shall be made and repaired promptly at the sole expense of the Cooperative and shall be lighted and barricaded for the protection of the public.

Section 7. **City to be held harmless.** The Cooperative shall, and by its acceptance hereof does, expressly assure all risk of operation of its system within the City therefrom, including, but not limited to, all damages which may be awarded against it in favor of any person or persons, firm or corporation resulting from any act or thing done or omitted to be done by the Cooperative by virtue of the authority herein granted or said corporation's business operations.

Section 8. **Cooperative to abide by ordinances and Oregon State Statutes.** The Cooperative, its employees or agents shall abide by the ordinances of the City herewith now in existence or hereinabove enacted as equally and to the same extent as any private citizen or public concern, excepting only for the rights and privileges granted said Cooperative hereunder; and further, the Cooperative shall not violate nay applicable provisions of the Oregon Antitrust Law codified in ORS 646.705 to 646.836 nor shall the granting of this franchise be in any way construed as in violation

thereof; and further, the Cooperative shall not infringe, violate or engage in any activity prohibited by the Oregon Unlawful Trade Practices Act as defined in ORS 646.605 to 646.652, this franchise being subject to the sanctions contained within such statutory provisions including, but not limited to, ORS 646.646.

This franchise is subject to said above-stated terms and statutory provisions; and further, should any part hereof contravene such terms or provisions, then any provision herein contained contrary thereto shall be deemed null and void.

[Section 8 as amended by Ordinance No. 370, passed January 12, 1983.]

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Section 9. City to retain all rights and remedies.
Except for the franchise right granted herein, the City shall retain all of its rights and remedies under ORS 221,420 to 221,470. The city shall retain its general municipal police powers and the exercise of such over the erection, installation, replacement and maintenance of poles, wires and similar apparatus of the Cooperative in streets, alleys and public ways; and further, such police power shall extend to the designation of on what parts of streets there may be erected poles, lines, conduits or other apparatus, or in proper cases, to require relocation thereof, and compel all generally accepted improvements which tend to decrease the obstruction of the streets or increase the safety or convenience of the public in their use; and further, said power shall extend, although not limited to, the regulation of the use, location, height, and size of utility poles as part of the City's general planning and zoning process and power.

[Section 9 as amended by Ordinance No. 370, passed January 11, 1983.]

Section 10. Franchise to be exclusive. No franchise shall be granted unto any other person, firm or corporation to engage in a similar business within the city of Brookings during the term of this franchise, except upon payment of comparable consideration to the city of Brookings in money or services, unless otherwise permitted under the provisions hereof or mandated by any state or federal law, rule or regulation.

Section 11. Acceptance of franchise. The grant of franchise herein made shall be void and of no effect unless the Cooperative shall of itself accept and agree in writing to the terms and conditions of this ordinance, which acceptance shall be filed with the city recorder prior to 45 days after the passage of this ordinance.

[Section 11 as amended by Ordinance No. 370, passed January 11, 1983.]

Section 12. Terms of renegotiation of franchise. Either the City or the Cooperative, as the case may be, may submit a written request to the other for the purposes of renegotiating any or all portions of the franchise hereinunder granted.

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Section 13. [Emergency clause.]

Passed by the council and approved by the mayor December 16, 1982.