

COUNCIL BILL NO. 1908

ORDINANCE NO. 1890

AN ORDINANCE OF THE CITY OF LAMAR, MISSOURI, GRANTING A FRANCHISE TO OPERATE A NATURAL GAS DISTRIBUTION SYSTEM WITHIN THE CITY TO SPIRE MISSOURI INC.

WHEREAS §71.530, RSMo, authorizes cities in Missouri to contract with a corporation for the purpose of supplying gas; and

WHEREAS Spire Missouri Inc. (“Spire”) has requested that the City renew the franchise previously granted to Spire for an additional twenty (20) year term; and

WHEREAS the Board of Aldermen desires to approve the renewal of its municipal franchise with Spire pursuant to the terms and conditions provided in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Aldermen of the City of Lamar, Missouri, as follows:

Section 1. The right, permission and authority for a period of twenty (20) years is hereby granted to Spire Missouri Inc., a corporation of the State of Missouri (hereinafter referred to as “Spire”) to construct, reconstruct, excavate for, place, replace, extend and maintain all necessary or appropriate mains, service pipes, conduits, conductors, vaults, vaporizers, regulators, meters, sensors, routers, poles, antennae, and any and all other equipment, appurtenances and fixtures as may be reasonably necessary or desirable in the operation of a natural gas distribution system, in, along, across, over and under the streets, roads, alleys, sidewalks, squares, bridges within the corporate limits of the City of Lamar (hereinafter referred to as the “City”) as now fixed and within any future extensions of its limits as hereafter extended, and areas dedicated to the City for public utility use, for the purpose of transmitting, furnishing, transporting and distributing natural gas for light, heat, power and other purposes within the City and in territory adjacent to the City, and for the purpose of transporting and transmitting natural gas through the City; all such equipment, appliances and apparatus to be installed and maintained with due regard to the rightful use by other persons with vehicles or otherwise, of the streets, roads, alleys, sidewalks, squares, bridges and other public places and areas dedicated to the City for public utility use; and exercise of the rights, permission and authority hereby granted shall at all times be subject to lawful regulation by the City in the exercise of its police powers. For the purposes of this Ordinance, unless the context clearly indicates otherwise, the term “right-of-way” or “rights-of-way” shall include streets, roads, alleys, sidewalks, squares, bridges and areas dedicated to the City for public utility use.

Section 2. Extensions of, and additions to, the distribution system maintained by Spire in the City, shall be made in accordance with the rules and regulations governing such extensions and additions by Spire now on file with the Missouri Public Service Commission or in accordance with such amended rules and regulations governing such extensions and additions by Spire as may hereafter become effective in the manner provided by law. The financial responsibility for relocations of Spire’s facilities within the City’s rights-of-way shall

be determined by State law as shall be specified by statute or common law at the time of the relocation, and nothing herein shall be construed to confer upon Spire or the City any rights inconsistent therewith. The City will not vacate any public right-of-way containing any Spire facilities without first advising Spire of its intention to vacate the right-of-way and cooperating with Spire in reasonable attempts to obtain the necessary property rights to maintain and construct in the future its facilities in the right-of-way proposed to be vacated. The City shall also provide Spire with a reasonable opportunity to make arrangements to relocate its facilities before completing any such vacation.

Section 3. Spire shall indemnify and hold the City harmless from all liability, judgments, decrees, costs, expenses and attorneys' fees incurred or imposed on account of injury or damage to persons or property to the extent caused by the negligent acts or omissions or mismanagement of Spire or its subcontractors in the construction, reconstruction, excavation, extension, restoration, or maintenance of the mains, service pipes, conduits, conductors or other equipment in, along, across, over or under any of the streets, roads, alleys, sidewalks, squares, bridges or other public places in the City in the exercise of any of the rights and privileges conferred by this Ordinance.

Section 4. The rights, privileges and authority granted herein shall inure to and be vested in Spire, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon Spire shall devolve and be binding upon its successors and assigns, successively, in the same manner.

Section 5. Spire shall, not later than February 1 and August 1 respectively of each year, make a report to the governing board of the City of its gross receipts from the sale of natural gas for domestic and commercial purposes within the corporate limits of the City for the six (6) month period ending at the last meter reading preceding December 31, and June 30 respectively; and at the time of making such reports, pay into the City treasury a sum equal to five percent (5%) of said gross receipts subsequent to the effective date of this franchise. Said percentage of Spire's gross receipts is hereby levied and assessed as an occupation and license tax (in lieu of all other occupation, license or other revenue taxes or fees) for the privilege of engaging in the business herein recited during the term hereof; and as a further consideration for this franchise, Spire agrees to recognize the same as a valid tax and make said payments during such periods. In addition, Spire shall pay any applicable right-of-way management costs imposed by the City, subject to the provisions of §67.1840, RSMo, or its successor.

Section 6. Spire shall, within thirty (30) days after the passage and approval of this Ordinance, file a memorandum detailing Spire's acceptance thereof with the City Clerk. Upon receipt by the City Clerk of such memorandum, the franchise granted herein shall continue and remain in full force and effect as a renewal of the preceding franchise for a period of twenty (20) years.

Section 7. Neither acceptance of, nor compliance with, the provisions of this Ordinance shall in anywise impair or affect, or constitute or be construed as a relinquishment

or waiver of any right, permission or authority which Spire may have independently of this Ordinance; nor shall any use by Spire of public property or places in the City, as authorized by this Ordinance or service rendered by Spire, in the City, be treated as use solely of the rights, permission and authority provided for by this Ordinance or as service referable solely to this Ordinance or to any obligation of service consequent upon acceptance thereof or as in anywise indicating non-use of, non-compliance with, any obligation incident to, any right, permission or authority vested in Spire independently of this Ordinance; and the acceptance provided for in Section 6 of this Ordinance, and each and every compliance with the provisions of this Ordinance or with any obligation arising from acceptance thereof, shall be subject to, and conditioned by, the provisions of this Section 7, with the same force and effect as though each of the provisions of this Section were expressly incorporated in such acceptance and expressly declared by the acceptor, its successors or assigns, at and prior to the time of such compliance by it, as conditions of such compliance.

Section 8. A covenant of good faith and fair dealing being implied into every Missouri contract, during the term of this franchise, the City shall not prohibit the connection of or service to new natural gas customers within its boundaries, nor take any action to require the discontinuance of natural gas service, other than as may be set forth in the rules and regulations of the Missouri Public Service Commission.

Section 9. This Ordinance shall not relieve Spire of the obligation to comply with any lawful ordinance now existing in the City or enacted in the future requiring Spire to obtain written permits or other approval from the City prior to commencement of construction of facilities within the City rights-of-way, except Spire shall not be required to obtain permits or other approval from the City for the maintenance and repair of its facilities.

Section 10. If any provision of this Ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

PASSED by the Board of Aldermen and **APPROVED** by the Mayor of the City of Lamar, Missouri, this 21st day of March, 2022.

By _____
MIKE HULL, Mayor

ATTEST:

By _____
SANDRA PHIPPS, Acting City Clerk