

# City of Mesquite, Texas

## Legislation Text

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**File #: 23-6471, Version: 1**

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An ordinance, on second reading, granting to Farmers Electric Cooperative, Inc., its successors and assigns, the nonexclusive right to use and occupy rights-of-way within the City of Mesquite for the construction and operation of an electric transmission and distribution system, prescribing conditions governing the use of the public rights-of-way, providing for compensation; therefore, providing for an effective date and a term of said franchise, providing for written acceptance of this franchise and finding that the meeting at which this ordinance is passed is open to the public.

Through the course of obtaining electrical service to the new Copeland Park, City staff discovered that Farmers Electric Cooperative, Inc. has electric distribution facilities dually certified and collocated with Oncor Electric Delivery facilities within the City's rights-of-way.

Farmers is an electric cooperative corporation that was formed over 80 years ago, and its service area in Mesquite (see attached Distribution Line Location Map) was established prior to the City's annexing this area in 1974. While City staff was aware that Farmers held a couple of easements granted by the City in 1985, staff was unaware that these facilities specifically occupied City rights-of-way. Over the years, much of the Farmers service area was transferred to Oncor, and currently, only 28 Farmers customer accounts remain in Mesquite.

Unlike Oncor, which is a private, investor-owned utility, Farmers is a non-profit, public retail electric utility operating a retail electric distribution system within a service area defined by a Certificate of Convenience and Necessity (CCN) issued by the Texas Public Utility Commission (PUC). Under State law, Farmers has the right to provide service within their CCN, and a municipality may not directly or indirectly regulate the rates, operations and services of an electric cooperative, except "to the extent necessary to protect the public health, safety and welfare." The rates charged by Farmers are established by a board of directors who are elected by members of the Cooperative and only the Public Utility Commission of Texas (PUC) has jurisdiction to modify those rates.

The City's streets, rights-of-way and public easements used by utilities are valuable public properties acquired and maintained by the City and State law allows the City to receive compensation for this use within the boundaries of the City. City staff has successfully negotiated the terms and conditions of a proposed franchise agreement with Farmers for an initial period of 20 years, with automatic six-month renewal periods up to the Charter limitation of 30 years, effective on the date when Farmer's written acceptance of the franchise is filed with the City Secretary.

In consideration for the privilege and license granted by the City to Farmers to occupy and use the City's rights-of-way, Farmers will pay the City a franchise fee of four percent of its total gross receipts received from the provision of electric service within Mesquite. The terms and conditions of this proposed franchise agreement with Farmers are similar to provisions of the City's franchise agreement with Trinity Valley Electric Cooperative that the City Council approved on November 16, 2020.

The City Charter requires ordinances granting franchises for public utilities to be read and passed at three regular meetings of the City Council. This is the second reading of the proposed franchise ordinance. The first

reading and passage took place at the March 6, 2023, Council meeting, and the third and final reading is scheduled for the April 3, 2023, Council meeting.

**Recommended/Desired Action**

Approve the proposed franchise ordinance on this second reading.

**Attachment(s)**

Ordinance

Farmers Distribution Line Location Map

Farmers Electric Cooperative Service Area Map

**Drafter**

Ted Chinn

**Head of Department**

Ted Chinn