

*Mail to
Post Oak Bend
Linda Hammett
for your files*

ORDINANCE NO. 4

AN ORDINANCE WHEREBY THE TOWN OF POST OAK BEND, TEXAS, GRANTS TO GULF STATES-UNITED TELEPHONE COMPANY THE RIGHT, PRIVILEGE, AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, ERECT, INSTALL, OPERATE, AND MAINTAIN ITS POLES, WIRES, LINES, ANCHORS, CABLES, MANHOLES, CONDUITS, AND OTHER PLANT CONSTRUCTION, FIXTURES, AND APPURTENANCES ALONG, ACROSS, ON, OVER, THROUGH, ABOVE AND UNDER ALL PUBLIC STREETS, AVENUES, ALLEYS, WAYS, GROUNDS, AND PLACES IN SAID TOWN OF POST OAK BEND, TEXAS, UPON TERMS AND CONDITIONS, AND THAT SAID TOWN OF POST OAK BEND, TEXAS, SHALL RECEIVE AN ANNUAL AMOUNT AND AS TO OTHER MATTERS, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH ALL AS HEREIN PROVIDED:

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF POST OAK BEND, TEXAS THAT:

SECTION 1. The TOWN of Post Oak Bend, Texas, hereinafter called the "TOWN", hereby grants to Gulf States-United Telephone Company, hereinafter called the "TELEPHONE COMPANY", the right, privilege and authority to construct, reconstruct, erect, install, operate, and maintain its poles, wires, lines, anchors, cables, manholes, conduits, and other plant construction, fixtures, and appurtenances along, across, on, over, through, above, and under all present and future public streets, avenues, alleys, ways, grounds, and places of the TOWN within the present limits of the TOWN and within the limits of the TOWN as the same from time to time may be extended or enlarged, for the business and purposes of furnishing communications services, both audible and visual, to the public by telephone or other electrical or electromagnetic means, upon the terms and conditions herein contained.

SECTION 2. The rights herein granted shall not be exclusive, and the TOWN reserves the right to grant like rights and privileges to use the public streets, avenues, alleys, ways, grounds, and places within the TOWN to others for similar and other uses, the same not to interfere, however, with the enjoyment of the rights and privileges herein granted to the TELEPHONE COMPANY.

SECTION 3. The poles, wires, lines, anchors, cables, and other construction, fixtures and appurtenances placed or erected above the ground by the TELEPHONE COMPANY shall be so placed and maintained that same will interfere as little as practicable with the ordinary travel of the streets, avenues, alleys, ways, and sidewalks of the TOWN. In case of any bringing to grade or change of grade, or route of any street, avenue, alley, or way, the poles the TELEPHONE COMPANY therein or thereon shall be so set and maintained by the TELEPHONE COMPANY as to conform thereto, and said poles shall not be so placed as to interfere with the flow of water in any sewer or water pipe.

SECTION 4. During the period that this Ordinance and the franchise herein granted remain in force and effect, the TELEPHONE COMPANY shall indemnify and hold harmless the TOWN from and against all damages to any person or property arising through any unlawful or negligent act or omission of the TELEPHONE COMPANY in its occupancy of the public streets, avenues, alleys, ways, grounds, and places of the TOWN under the terms hereof; provided, however, that the TOWN shall immediately within forty-eight (48) hours, give written notice to the TELEPHONE COMPANY of any claim for damages asserted against the TOWN by reason of any act or omission of the TELEPHONE COMPANY in the exercise of the rights herein granted, whether or not legal action with respect thereto has been commenced, and the TELEPHONE COMPANY shall be entitled to control jointly with the TOWN the conduct and settlement of any litigation and any negotiations had or conducted with respect to any such claim, and the TELEPHONE COMPANY shall have no liability under this section unless the TOWN shall have promptly given to the TELEPHONE COMPANY the notice herein provided and allowed the TELEPHONE COMPANY jointly to control the conduct of such litigation, settlement, and negotiations, and each of same. The TOWN shall cooperate in good faith with the TELEPHONE COMPANY to avoid and minimize the amount of each such claim.

SECTION 5. Any person desiring to use any public street, avenue, alley, way, ground, or place in the TOWN for the moving of a house or building or other bulky structure or for any other purpose which requires the temporary removal, raising, or lowering of any pole, wire, line or other plant construction, fixture, appurtenance, or property of the TELEPHONE COMPANY constructed, erected, installed, or maintained or used, under the terms hereof shall before doing so obtain a permit for such use from the Town Council of the TOWN, which permit shall be granted only upon such person's depositing with the TELEPHONE COMPANY sufficient amount of money to cover the cost to the TELEPHONE COMPANY of said temporary removal, appurtenances, or other property required to permit such use. And, such person shall further be required to give the TELEPHONE COMPANY not less than forty-eight (48) hours written notice in advance of the commencement of such use, so that the TELEPHONE COMPANY will be able to arrange for such temporary removal, raising, or lowering of said poles, wires, lines, plant construction, fixtures, appurtenances, or other property.

SECTION 6. The right, license, privilege, and permission is hereby granted to the TELEPHONE COMPANY, its successors, and assigns, to trim trees upon and overhanging the streets, alleys, sidewalks, and public places of the TOWN, so as to prevent the branches of such trees from coming in contact with the wires or cables of the TELEPHONE COMPANY, and when so ordered by the TOWN, said trimming shall be done under the supervision and direction of the Town Council, or of any Town official to whom said duties have been or may be delegated.

SECTION 7. In consideration of the said use of said public streets, avenues, alleys, ways, grounds, and places, and as the cash consideration for the agreements herein contained, the TELEPHONE COMPANY shall pay annually to the TOWN, on or before March 1 of each year, an amount equal to two percent (2%) of the annual gross receipts received by the TELEPHONE COMPANY from the rendition of local exchange telephone service within the corporate limits of the TOWN during the preceding calendar year, the first such payment to be made to the TOWN on or before March 1 1980. The TOWN agrees that the payment provided in this section to be made by the TELEPHONE COMPANY shall be paid and received in lieu of any tax, license, charge, fee, street or alley rental or other character of charge for use and occupancy of the streets, avenues, alleys, ways, grounds, and places of the TOWN, in lieu of any pole tax or charge, in lieu of any easement or franchise tax, whether levied as an ad valorem, special, or other character of tax, and in lieu of any other imposition; provided, however, that nothing herein shall limit the right of the TOWN to impose any lawful general ad valorem taxes now or hereafter levied.

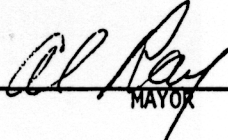
SECTION 8. This ordinance and the franchise herein granted shall be and remain in full force and effect for a period of thirty-five (35) years, commencing on 1-23-79, and ending thirty-five (35) years after such date.

SECTION 9. The rights, powers, limitations, duties, and restrictions herein provided for shall inure to the benefit of and be binding upon the TOWN and the TELEPHONE COMPANY and their respective successors and assigns.

SECTION 10. If any section, sentence, clause, or phrase of this Ordinance and franchise is for any reason held to be illegal, ultravires or unconstitutional, such invalidity shall not affect the validity of the remaining portions thereof. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 11. The fact that telephone services are a public necessity creates an emergency; therefore, all rules and regulations providing for the reading of ordinances more than one time or on more than one occasion be and the same hereby are suspended, and this ordinance is passed and shall take effect as an emergency measure, and shall be and remain in full force and effect as herein provided from and after its passage and approval.

Passed by the Town Council of the Town of Post Oak Bend, Texas on
this the 29 day of June, 1977.



MAYOR

(Seal)

ATTEST:



SECRETARY