BILL 2020-38

Second/Final Reading

Agenda Item

TO: Mayor and City Council

FROM: Padraic Corcoran, City Attorney
Shellie J. Blades, City Clerk

DATE: October 5, 2020

RE: Code – General Provisions/Legal Fees

Purpose

It was discovered during the litigation on the CenturyLink lawsuit that the City of Cameron would have been able to recoup attorney's fees on this and other such lawsuits if the authority to do so was memorialized in our City Codes. This Ordinance is to correct that situation for any future circumstance. Further information will be provided during the Council meeting.

Recommendation

Staff recommends approval.

Bill 2020-38

AN ORDINANCE AMENDING CHAPTER 1, GENERAL PROVISIONS, OF THE CODE OF THE CITY OF CAMERON, MISSOURI TO ENACT PROVISIONS RELATING TO SELF-PREEMPTION AND ENFORCEMENT OF THE CAMERON CITY CODE

WHEREAS, various new state or federal statutes and regulations continue to be enacted, supplemented, promulgated, amended, as well as subjected to judicial challenge and invalidation or subject to pending litigation regarding regulation of certain communications providers, services, and operations as they pertain to local rights-of-way, zoning regulations, and other municipal authority; and

WHEREAS, despite the uncertainty created by these circumstances, the City Council desires to continue at all times to ensure compliance with such changing applicable law, and, therefore, finds it in the best interest of the public to amend the Code of Ordinances to be deemed to conform with any changes in state or federal law that may be validly enacted and lawfully applicable; and

WHEREAS, the City Council desires to enact a self-preempting provision to ensure that such self-preemption applies to any provisions of the Cameron City Code that may be affected by the frequently-changing legal requirements imposed on cities until such provisions are amended or repealed, when appropriate; and

WHEREAS, the City is also authorized to protect the taxpayer and public funds from incurring expenses resulting from violators of laws or contracts or other obligations to the City including such as relating to use of City property, and the Council desires to further amend the Code to ensure the regulations for use of public property are clear and that recovery of costs are available in the event that the City is forced to incur such expenses; and

WHEREAS, the City wishes to amend Chapter 1, General Provisions, to enact a self-preemption provision and City Code enforcement provisions.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CAMERON, MISSOURI, AS FOLLOWS:

Section 1. The whereas clauses are hereby specifically incorporated herein by reference.

Section 2. Chapter 1, General Provisions, is hereby amended by enacting three new Sections to read as follows:

Sec. 1-12. – Conflict of provisions.

No provision of the Cameron City Code shall apply to any circumstance in which such application shall be unlawful under superseding federal or state law and furthermore, if any section, subsection, sentence, clause, phrase, or portion of the

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Cameron City Code is now or in the future superseded or preempted by state or federal law or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and applied as required by law.

Sec. 1-13. - Enforcement; Attorney's Fees.

The City shall be entitled to enforce any provision of the Cameron City Code through all remedies lawfully available, and any person determined to have violated the terms of the Cameron City Code shall further be liable to pay the City's costs and attorney's fees in enforcing such Cameron City Code provisions. Additionally, any user of City services, rights-of-way, or other City facilities or property, shall as a condition of such use or continued use, to the full extent permissible by law, be liable to pay the City's costs and attorney's fees incurred in enforcing any lawful requirement applicable to such use, whether arising in contract, statute, ordinance, or other enforceable duty as to such use.

Section 1-14. - Violation; Remedies, Unauthorized Holdover.

Any person who fails to hold and maintain a current and valid agreement with the City to use the City's land or facilities has no right to holdover and shall be subject to the provisions and City remedies of this section in addition to all other remedies and penalties as may otherwise exist in applicable law. Any claimed holdover right shall be deemed void and terminated upon expiration of a valid use agreement unless the City has affirmatively in writing authorized the holdover, or as otherwise may be required by law. Every person during any period without a valid agreement shall, during any period of unauthorized use: (1) indemnify the City from any liability arising from the use, (2) pay any damages and costs of the City from such use, including attorney fees incurred in enforcing this ordinance, and (3) make payment of compensation in the amount of two times the monthly rent of the last expired agreement, if a holdover, and two times the market rental value reasonably determined by the City (but in no event less than two times the rate required by ordinance), if no prior agreement, until a valid agreement is executed with the City or the attachments and/or use is fully removed, the property restored, and all obligations to the City satisfied. Unless otherwise provided in an unexpired agreement, such person shall also be responsible for interest on all amounts owed at a rate of one and one half (1 ½) percent per month. Nothing in these provisions, remedies, or compensation requirements, or acceptance or enforcement thereof by the City, shall be deemed to accept or authorize any use of public property without a required agreement, after the expiration of such agreement, or otherwise in violation of applicable requirements.

Section 3. The Mayor is authorized to sign this Ordinance approving it on behalf of the City of Cameron, Missouri.

Section 4. The City Clerk is directed to attest to the Mayor's signature.

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Section 5. This Ordinance shall be in full force and effect from and after the date of its passage and approval.

Passed and approved on first reading this 21st day of September 2020.

Passed and approved on second/final reading this 5th day of October 2020.

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Mayor Dennis M. Clark

ATTEST:

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City Clerk

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