COUNCIL MEETING

CITY OF LUVERNE

August 26, 2024

The City of Luverne Council met in regular session on August 26, 2024 at 5:30 p.m., in the City Hall Building. The following members were present:

Mayor Ed Beasley

Betty Dawson, Councilwoman

Kip Smith, Councilman

Kathy Smyth, Councilwoman

Elliott Jones, Councilman

Eddie Billings, Councilman

Mike Jones, Attorney

Mike Johnson, Chief

Margie Gomillion, Clerk

Visitors:

Steve Defee

Ryan McGhee

Mayor Beasley called the meeting to order. The mayor called on Councilwoman Smyth to lead the pledge of allegiance to the flag and Steve Defee to say a prayer.

The mayor called for the approval of the minutes of August 12, 2024. Councilman Jones made a motion to approve the minutes as written. Councilwoman Dawson seconded the motion and the vote was unanimously approved.

Mayor Beasley called on the city clerk for the administrative report. Routine work was performed.

The mayor called everyone’s attention to the chief’s report. Since the last meeting, the police department had 152 calls for service not including building checks, 22 traffic stops, wrote 12 citations, and gave 10 warnings. The department has made 4 misdemeanor and 1 felony arrests. There has been 4 animal control calls since the last meeting.

Mayor Beasley called on Councilman Billings to report on the park. Councilman Billings stated no report.

The mayor stated everything is good at the library.

Mayor Beasley called for a report on Fire/Rescue. Councilman Smith stated everything is good.

The mayor called on Steve Defee to report on the airport. Mr. Defee stated this past week myself and the mayor met with Mr. Kenneth Boswell with ADECA, Frank Folmar with ALDOT and Michael Cole with the engineering firm Barge Design Solutions. Mr. Cole put together the printout of the projected cost for the project at the airport in the amount of $2,406,401. Mr. Defee discussed ALDOT wanted us to redo just the ramp, but after speaking with Mr. Boswell he asked us to pursue for funding to do the whole airport. That being the ramp, runway and completely redoing the entire lighting system. One of the projects that ALDOT is requiring us to continue to do is one of the reasons they are holding our license in a holding status which is limiting our ability to move forward with projects just like this. There are also some funds available through USDA. Michelle Royals has previously been the engineer from the city’s perspective, but has now taken on the roll as the county’s engineer and has requested to start to back away. Mr. Michael Cole who has brought this proposal, and his engineering firm is in close relationship with other projects with Mr. Frank Folmar. He is very knowledgeable of it and they have a good working relationship for getting the stuff done. I think he would be an asset to the city if we let him become a part of it to help see this through. The mayor stated Mr. Cole’s fee would be included with the grant. Mr. Defee stated ALDOT has asked the city to cut trees on each end of the runway that are adjacent to property owners that are in question to ALDOT. We have to be in good standing with ALDOT to move forward with these grants. We have to get into compliance, so with your permission we may have to acquire the easement right-of-ways which means there may be some money we have to pay for a tree to be cut. Also, establish with those property owners in the future anything that’s in the way we could automatically take it down without it being a problem with them. After further discussion, Councilman Jones made a motion to hire Mr. Michael Cole with Barge Design Solutions as the engineer for the airport projects. Councilwoman Smyth seconded the motion and all was in favor.

Councilwoman Smyth stated Melanie Hill with Senator Katie Britt’s office was not able to attend tonight due to family health issues but would like to reschedule.

Mayor Beasley stated we need to discuss the property located at 88 E. 5th Street about demolishing the building and assess the expenses of the demolition against real property. The mayor stated the lot next door to 88 E. 5th Street is available for purchase from the state. It’s in tax foreclosure and they will sell it to the city for $100. After some discussion, Councilman Jones made a motion to purchase the lot next to 88 E. 5th Street from the state for $100. Councilman Smith seconded the motion and the vote was unanimously approved. Attorney Jones stated need to decide if the city wants to clean up the property located at 88 E. 5th Street and assess the clean up against the real property. Mr. Jones stated he has sent two certified letters to the property owner giving him 45 days both times to clean it up and hasn’t heard anything. After further discussion, Councilman Smith made a motion to table this until the next meeting to find out if taxes are up to date. Councilman Billings seconded the motion and all was in favor.

The mayor presented an event request from Jeff Penn with Glory Road Ministry’s Tent Revival for the 3rd Annual Revival at the Park on September 18-21, 2024 at Turner Park. Councilman Billings made a motion to approve Glory Road Ministry’s Tent Revival for the 3rd Annual Revival at the Park on September 18-21, 2024 at Turner Park. Councilman Jones seconded the motion and all was in favor.

Mayor Beasley presented the council with Ordinance 24-02 updating the Franchise Agreement with Brightspeed of Alabama, Inc, F/K/A Centurytel of Alabama, LLC. After some discussion, Councilman Smith made a motion for unanimous consent to consider Ordinance 24-02. The motion was seconded by Councilman Jones and the vote was unanimously approved. Councilman Jones made a motion to adopt Ordinance 24-02. Councilman Smith seconded the motion and all was in favor. The Ordinance is as follows:

**ORDINANCE NO. 24-02**

An ordinance granting a franchise to Brightspeed of ALABAMA, INC, f/k/A Centurytel of alabama,llc ON BEHALF OF ITSELF AND ITS OPERATING AFFILIATES (“Brightspeed”) to operate and maintain a TELECOMMUNICATIONS SYSTEM (“the system”) in the City OF LUVERNE, AL, (“the CITY”).

The City hereby ordains that it is in the public interest to grant Brightspeed a Franchise to operate the System pursuant to the terms and conditions contained herein.

**SECTION 1. Grant of Franchise.** The City hereby grants to Brightspeed the right, privilege and authority to construct, install, maintain, operate, upgrade, replace, renovate, adjust, protect, support, raise, lower, disconnect, remove and relocate its cables, poles, pedestals, boxes, wires, conduits, conductors, pipes and related appurtenances (“Facilities”) for its System in, under, along, over and across the present and future streets, alleys and public ways of the City (“Public Ways”), for the purpose of providing telecommunication services to the City’s inhabitants and businesses.

**SECTION 2. Acceptance by Brightspeed.** Within sixty (60) days after the passage of this Ordinance by the City, Brightspeed shall file a signed copy thereof with the City Clerk, otherwise the Ordinance and the rights granted herein shall be null and void.

**SECTION 3.** **Term.** The Term of this Franchise is fifteen (15) years commencing on the date of Acceptance by Brightspeed as set forth in Section 2, above. This Franchise will automatically renew for three additional and successive five (5) year terms.

**SECTION 4. Franchise Fee.** Within sixty (60) days after the date of Brightspeed’s Acceptance of this Ordinance and until its expiration, Brightspeed will pay the City one (1%) of Brightspeed’s local exchange access service Gross Revenue. Payment shall be made quarterly within sixty (60) days after the end of each quarter during the Term of this Franchise.

**SECTION 5. Records Inspection.** Brightspeed shall make available to the City, upon reasonable advance written notice of no less than sixty (60) days, such information pertinent only to enforcing the terms of this Ordinance in such form and at such times as Brightspeed can reasonably make available. Subject to applicable laws, any information that is provided to the City and/or that the City reviews *in camera* is confidential and proprietary and shall not be disclosed or used for any purpose other than verifying compliance with the terms of this Ordinance. Any such information provided to the City shall be immediately returned to Brightspeed following review. The City will not make copies of such information.

**SECTION 6. Non-Exclusive Franchise.** The right to use and occupy the Public Ways of the City shall be nonexclusive, and the Town reserves the right to use the Public Ways for itself or any other entity. The City’s use, however, shall not unreasonably interfere with Brightspeed’s Facilities.

**SECTION 7. City Regulatory Authority.** The City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties consistent with applicable federal and state law.

**SECTION 8. Indemnification.** The City shall not be liable for any property damage or loss or injury to or death of any person that occurs in the construction, operation or maintenance by Brightspeed of its Facilities. Brightspeed shall indemnify, defend and hold the City harmless from and against third party claims, demands, liens and all liability or damage of whatsoever kind on account of Brightspeed’s use of the Public Ways. The City shall: (a) give prompt written notice to Brightspeed of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) permit Brightspeed to assume the defense of such claim, demand, or lien. Brightspeed shall not be subject to liability for any settlement made without its consent. Notwithstanding the other provisions contained herein, Brightspeed shall in no event be required to indemnify the City for any claims, demands, or liens arising from the negligence or wrongful actions or inactions of the City, its officials, boards, commissions, agents, contractors, and/or employees.

**SECTION 9. Insurance Requirements.** Brightspeed will maintain in full force and effect for the Term of the Franchise, at Brightspeed’s expense, a comprehensive liability insurance policy written by a company authorized to do business in the Commonwealth of Virginia, or will provide self-insurance reasonably satisfactory to the City, protecting it against liability for loss, personal injury and property damage occasioned by the operation of the System by Brightspeed. Such insurance will be in an amount not less than $1,000,000.00. Brightspeed will also maintain Worker’s Compensation coverage throughout the term of this Franchise as required by law. The City may review the status of Brightspeed’s insurance at [www.Brightspeed.com/moi](http://www.centurylink.com/moi).

**SECTION 10. Annexation.** When any territory is approved for annexation to the City, the City shall within ten (10) business days notify Brightspeed: (a) each site address to be annexed as recorded on City assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City’s ordinance approving the proposed annexation.

**SECTION 11. Plan, Design, Construction and Installation of Brightspeed’s Facilities.**

**11.1** All Facilities under authority of this Ordinance shall be used, constructed and maintained in accordance with applicable law.

**11.2**  Brightspeed shall, prior to commencing new construction or major reconstruction work in Public Ways or other public places, apply for any required permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed. Brightspeed will abide by all applicable ordinances and reasonable rules, regulations and requirements of the Town consistent with applicable law, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, Brightspeed shall not be obligated to obtain a permit to perform emergency repairs.

**11.3**  To the extent practical and consistent with any permit issued by the City, all Facilities shall be located so as to cause minimum interference with the Public Ways and shall be constructed, installed, maintained, renovated or replaced in accordance with applicable and lawful rules, ordinances and regulations of the City.

**11.4** If, during the course of work on its Facilities, Brightspeed causes damage to or alters the Public Way or other public property, Brightspeed shall replace and restore such Public Way or public property at Brightspeed’s expense to a condition reasonably comparable to the condition that existed immediately prior to such damage or alteration.

**11.5** Brightspeed shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground facilities or replacing existing underground facilities, each party shall first notify the other of such work in accordance with applicable law. In no event will the City be required to secure Brightspeed’s permission or consent to operate or construct in the City’s Public Ways. To the extent practicable under the circumstances, each party may allow the other party, at its own expense, to share a trench for laying its own facilities therein, provided that such action will not unreasonably interfere with the first party’s use of the trench or unreasonably delay project completion.

**11.6** Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing, or relocating its sewers, streets, water mains, sidewalks, or other public property. However, before commencing any work within a Public Way that may affect Brightspeed’s Facilities, the City shall give written notice to Brightspeed in accordance with applicable law, and all such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure, or prevent the free use and operation of either Party’s Facilities. The two parties shall work together to ensure that all of their facilities are protected and the project is completed.

**11.7** Brightspeed shall not attach to, or otherwise use or commit to use, any pole owned by Town until a separate pole attachment agreement has been executed by the parties.

**SECTION 12. Relocation of Facilities.**

**12.1** Relocation for the City. Brightspeed shall, upon receipt of advance written notice of not less than one hundred twenty (120) days, protect, adjust, support, raise, lower, temporarily disconnect, relocate or remove any Brightspeed property located in a Public Way when required by the Town consistent with its police powers. Brightspeed shall be responsible for any costs associated with these obligations to the same extent as other users of the respective Public Way and as otherwise required by applicable state or federal law.

**12.2** Relocation for a Third Party. Brightspeed shall, at the request of any person holding a lawful permit issued by the City, protect, adjust, support, raise, lower, temporarily disconnect, relocate or remove any Brightspeed property located in a Public Way, provided that the cost of such action is borne by the person requesting it and Brightspeed is given reasonable advance written notice. In such situation, Brightspeed may also require advance payment. For purposes of this subsection 12.2, “reasonable advance written notice” shall mean no less than thirty (30) days for a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

**12.3** Alternatives to Relocation. Brightspeed may, after receipt of written notice requesting a relocation of Facilities, submit to the City written alternatives to such relocation.  Such alternatives shall include the use and operation of temporary transmitting facilities in adjacent Public Ways. The City shall promptly evaluate such alternatives and advise Brightspeed in writing if one or more of the alternatives are suitable.  If requested by the City, Brightspeed shall promptly submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Brightspeed full and fair consideration.  In the event the City ultimately determines that there is no other reasonable alternative, Brightspeed shall relocate the components of the System as otherwise provided herein. Notwithstanding the foregoing, Brightspeed shall in all cases have the right to abandon the Facilities.

**SECTION 13. Vegetation Management.** Brightspeed shall have the authority to trim trees and other natural growth in the Public Ways in order to access and maintain the Facilities in compliance with applicable law and industry standards. This grant shall in no way impose a duty on Brightspeed; instead, this grant gives permission to Brightspeed should Brightspeed elect to conduct such activities from time-to-time in order to access and maintain its Facilities.

**SECTION 14. Renewal.** At least one hundred twenty (120) days prior to the expiration of this Franchise, Brightspeed and the Town shall either agree to extend the Term or use best faith efforts to renegotiate a replacement Franchise agreement.

**SECTION 15. Revocation of Franchise for Noncompliance.**

**15.1**  In the event that the City believes that Brightspeed has not complied with the terms of the Franchise, the City shall informally discuss the matter with Brightspeed. If these discussions do not lead to resolution of the problem, the City shall notify Brightspeed in writing of the exact nature of the alleged noncompliance.

**15.2** Brightspeed shall have thirty (30) days from receipt of the written notice described in subsection 15.1 to either respond to the City, contesting the assertion of noncompliance, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the City of the steps being taken and the projected date that they will be completed.

**15.3** In the event that Brightspeed does not comply with subsection 15.2, above, the City shall schedule a public hearing to address the asserted noncompliance issue. The City shall provide Brightspeed at least ten (10) days prior written notice of and the opportunity to be heard at the hearing.

**15.4** Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 15.3, determines that Brightspeed is noncompliant with this Ordinance, the City may:

A. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or

B. Commence an action at law for monetary damages or other equitable relief; or

C. In the case of substantial noncompliance with a material provision of the Ordinance, seek to revoke the Franchise in accordance with subsection 15.5.

**15.5**  Should the City seek to revoke the Franchise after following the procedures set forth above, the City shall give written notice to Brightspeed. Brightspeed shall have ninety (90) days from receipt of such notice to object in writing and state its reason(s) for such objection. Thereafter, the City may seek revocation of the Franchise at a public hearing. The City shall cause to be served upon Brightspeed, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, the City shall give Brightspeed an opportunity to state its position on the matter, after which the City shall determine whether or not the Franchise shall be revoked. Brightspeed may appeal the City’s determination to an appropriate court, which shall have the power to review the decision of the Town *de novo.* Such appeal must be taken within sixty (60) days of the issuance of the City’s determination. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce its rights under this Ordinance in lieu of revocation.

**15.6** Notwithstanding the foregoing provisions in this Section 15, Brightspeed does not waive any of its rights under applicable law.

**SECTION 16. No Waiver of Rights.** Neither the City nor Brightspeed shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies, and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with State or Federal law, as may be amended.

**SECTION 17. Transfer of Franchise.** Brightspeed’s right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without notice to the City, except when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with Brightspeed, or for transfers in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Brightspeed in the Franchise or Facilities in order to secure indebtedness.

**SECTION 18. Amendment.** Amendments to the terms and conditions contained herein shall be mutually agreed upon by the Town and Brightspeed and formally adopted by the Town Council as an ordinance amendment.

**SECTION 19. Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) business days after such notice is deposited in the United States Mail, postage prepaid, certified, and addressed to the Parties as set forth below:

The City:

The City of Luverne, AL

Brightspeed:

1120 S. Tryon St., Ste. 700

Charlotte, NC 28203

**SECTION 20. Publication.** In accordance with Alabama law, the city shall be responsible for publication of this Ordinance, and any amendments thereof. Brightspeed shall be responsible for payment of all necessary and reasonable costs of publication of this Ordinance, and any amendments thereof.

**SECTION 21. Severability.** If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority, including any state or federal regulatory authority having jurisdiction thereof, or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

CONSIDERED and APPROVED this 26th day of August 2024.

Next, the mayor presented the council with Ordinance 24-03 amending the City of Luverne Code of Ordinances Section 20-2-5 water and sewer rates. After some discussion, Councilman Jones made a motion for unanimous consent to consider Ordinance 24-03. The motion was seconded by Councilman Smith and the vote was unanimously approved. Councilman Jones made a motion to adopt Ordinance 24-03 effective October 1, 2024 after being published in the paper. Councilwoman Dawson seconded the motion and all was in favor. The Ordinance is as follows:

ORDINANCE 24-03

AMENDING THE CITY OF LUVERNE CODE OF ORDINANCES

Be it ordained by the City Council of the City of Luverne, Alabama, that Section 20-2-5 of the Code of Ordinances of the City of Luverne is hereby amended to read as follows:

Section 20-2-5 Water Rates

The following water rates shall apply to each user of water.

**Residential**

$13.00 plus $3.25 per 1,000 gallons per customer, per month

**Commercial**

$13.00 plus $4.15 per 1,000 gallons per customer, per month

**Industrial**

$13.00 plus $3.10 per 1,000 gallons per customer, per month

Sewer rates as follows:

**Residential**

$15.00 plus $4.25 per 1,000 gallons per customer, per month

**Commercial**

$34.00 plus $4.35 per 1,000 gallons per customer, per month

This ordinance shall become effective on the 1st day of October, 2024.

Adopted and approved this 26th day of August, 2024.

Mayor Beasley advised Mr. Dykes, Principal of Luverne School, requested a homecoming parade permit for October 4, 2024 at 12:00 noon. Councilman Billings made a motion to approve the parade permit. Councilman Jones seconded the motion and the vote was unanimously in favor.

Councilwoman Dawson stated she traveled to Dothan last week for the Congressional luncheon and enjoyed it.

Councilwoman Smyth stated she would like to thank everyone for the condolences on my dad. I appreciated every prayer, thought and outreach.

There being no further business to come before the meeting, Councilman Billings made a motion to adjourn the meeting. Councilwoman Smyth seconded the motion. Motion carried.

Meeting was adjourned.