

ARTICLE X. - FRANCHISES AND PUBLIC UTILITIES^[8]

Footnotes:

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State Law reference— Home-rule municipality power to regulate franchises, Vernon's Ann. Texas Civ. St., art. 1175.

Section 10.01. - Powers of the City.

The ownership, right of control and use of streets, highways, alleys, parks, public places and all other real property of the City, is hereby declared to be inalienable to said City, except by ordinances not in conflict with the provisions of this Charter. No franchise or easement involving the rights to use same, either along, across, over, or under the same shall ever be valid unless expressly granted, and exercised in compliance with the terms hereof, and of the ordinances granting the same. No act or omission of the City, its governing body, officials, or agents shall be construed to confer or extend by estoppel or implication, any right, franchise, or easement not expressly granted by ordinance. In addition to the City's power granted elsewhere in this Charter, the City shall have power to buy, own, sell, construct, lease, maintain and operate public service within or without the City limits and to manufacture, distribute and sell the output of such service operation within or without the city limits. The City shall have such regulatory and other power as may now or hereafter be granted under the Constitution and laws of the State of Texas. Public service shall include utilities or service to the public of every character.

Section 10.02. - Power to grant franchises.

The Council shall have the power by ordinance to grant, renew and extend all franchises of a public service operation within the City and, with consent of the franchisee, to amend the same. No franchise shall be granted for a term of more than twenty (20) years from the date of the grant, renewal or extension.

Section 10.03. - Grant not to be exclusive.

No grant or franchise to construct, maintain or operate a public service and no renewal or extension of such grant shall be exclusive.

Section 10.04. - Transfer of franchises.

No public service franchise shall be transferable except with the approval of the Council as expressed by ordinance. The term "transferable," as used herein, shall not be construed in such a manner as to prevent the franchisee from pledging said franchise as security for a valid debt or mortgage.

Section 10.05. - Ordinances granting franchises.

Every ordinance granting, renewing, extending, or amending a public service franchise shall comply with Section 2.13 of the City Charter unless otherwise required by State law.

(Charter Election of [5-9-2015](#))

Section 10.06. - Franchise value not to be allowed.

In fixing reasonable rates and charges for utility service within the City and in determining the just compensation to be paid by the City for public utility property which the City may acquire by

condemnation or otherwise, nothing shall be included as the value of any franchise granted by the City under this Charter.

Section 10.07. - Regulation of franchises.

Every grant, renewal, extension, or amendment of a franchise, whether so provided in the ordinance or not, shall be subject to the right of the Council, to wit:

- (a) To forfeit any such franchise by ordinance at any time for failure of the holder thereof to comply with the terms of the franchise. Such power shall be exercised only after written notice to the franchise holder stating wherein the franchise holder had failed to comply with the terms of the franchise and setting a reasonable time for the correction for such failure, and shall be exercised only after hearing and after such reasonable time has expired.
- (b) To impose reasonable regulations to ensure safe, efficient, and continuous service to the public.
- (c) To require such expansion, extension, enlargement and improvements of plants and facilities as are necessary to provide adequate service to the public.
- (d) To require every franchise holder to furnish to the City, without cost to the City, full information regarding the location, character, size, length, and terminals of all facilities of such franchise holder in, over and under the streets, alleys, and other public property of the City; and to regulate and control the location, relocation, and removal of such facilities.
- (e) To collect from every public utility operating in the City such proportion of the expense of excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, lighting, sweeping, and sprinkling the streets, alleys, bridges, culverts, viaducts, and other public places of the City as represents the increased cost of such operations resulting from the occupancy of such public places by such public utility, and such proportion of the costs of such operations as results from the damage to or disturbance of such public places caused by such public utility; or to compel such public utility to perform, at its own expense, such operations as above listed which are made necessary by the occupancy of such public places by such utility or by damage to or disturbance of such public places caused by such public utility.
- (f) To require every franchise holder to allow public utilities to use its poles and other facilities, including bridges and viaducts, whenever in the judgment of the Council such use shall be in the public interest, provided that in such event a reasonable rental shall be paid such owner of the facilities for such use. Provided further, that inability of such public utilities to agree upon rentals for such facilities shall not be an excuse for failure to comply with such requirement by the Council.
- (g) To prescribe the form of accounts kept by each such utility. If the franchise or ordinance does not prescribe the form of accounts kept by each utility, then it shall keep its accounts in accordance with the utility system of accounts for said utility prescribed the appropriate State and/or Federal utility regulator agencies.
- (h) To examine and audit the accounts and other records of any such utility during normal business hours as deemed necessary and to require annual and other reports, including reports on local operations by each such public utility. The Council shall, by ordinance, establish appropriate penalties for failure of a utility to provide reports.

Section 10.08. - Regulation on rates.

The Council shall have all powers granted by the State Constitution and Statutes to regulate the rates of public service activities within the City limits. Such regulations shall be in conformance with the procedures prescribed by the Constitution and Statutes of the State of Texas.

Section 10.09. - Consent of property owners.

The consent of abutting and adjacent property owners shall not be required for the construction, extension, maintenance, or operation of any public utility; but nothing in this Charter or in any franchise granted thereunder shall ever be construed to deprive any such property owner of any right of action for damage or injury to his or her property as now or hereafter provided by law.

Section 10.10. - Extensions.

All extensions of public utilities within the city limits shall become a part of the aggregate property of the public utility, and shall be operated as such, and shall be subject to all the obligations and reserve rights contained in this Charter and in any original grant hereafter made. The right to use any extension shall terminate with the original grant and shall be terminable as provided in this Charter. In case of an extension of a public utility operated under a franchise hereafter granted, such right shall be terminable at the same time and under the same conditions as the original grant.

Section 10.11. - Other conditions.

All franchises heretofore granted are recognized as contracts between the City and the grantee, and the contractual rights as contained in any such franchise shall not be impaired by the provisions of this Charter, except that the power of the City to exercise the right of eminent domain in the acquisition of any utility property is in all things reserved, and except the general power of the City heretofore existing and herein provided for to regulate the rates and services of a utility, which shall include the right to require adequate and reasonable extension of plant and service and the maintenance of the plant fixtures at the standard necessary to render the highest reasonable quality of utility service to the public. Every public utility franchise hereafter granted shall be held subject to all the terms and all conditions contained in the various sections of this Article whether or not such terms are specifically mentioned in the franchises. Nothing in this Charter shall operate to limit in any way, as specifically stated, the discretion of the Council or the voters of the City in imposing terms and conditions as may be reasonable in connection with any franchise grant, including the right to require such compensation or rental as may be permitted by the laws of the State of Texas.

Section 10.12. - Franchise records.

The City shall compile and maintain a public record of all franchises operating within the City.

Section 10.13. - Financial provisions.

The City may finance the acquisition by the City of privately owned utility properties, the purchase of land, and the cost of all construction and property installation for utility purposes by borrowing, in accordance with the provisions of this Charter.