

ARTICLE XI. FRANCHISES AND PUBLIC UTILITIES.

TDS comments:

The bold text indicates the language within Article XI of the City Charter that effectively confiscates the rights currently held by the private haulers of waste and recyclables within the City of Austin.

§ 1. INALIENABILITY OF PUBLIC PROPERTY.

The right of control and use of the public streets, highways, sidewalk, alleys, parks, public squares, and public places of the city is hereby declared to be inalienable by the city, except by ordinances not in conflict with the provisions of this Charter. No act or omission by the council or any officer or agent of the city shall be construed to grant, renew, extend, or amend by estoppel or indirection any right, franchise or easement affecting said public streets, highways, sidewalks, alleys, parks, public squares, public places and other real property.

§ 2. POWER TO GRANT FRANCHISE.

The council shall have the power by ordinance to grant, renew, and extend all franchises of all service providers placing or installing facilities or equipment in, on or over the City rights of way and of all public utilities of every character operating within the city, and, with consent of the franchise holder, to amend the same. **Provided, however, that no franchise shall be granted for a term of more than twenty-five (25) years, and that no franchise shall be granted, renewed, extended, or amended, except on condition that the city shall have the right at any time within five (5) years of the expiration of the term thereof to purchase the property of the franchise holder at a price to be determined according to the method agreed upon in the ordinance granting, renewing, extending, or amending the franchise.**

Amendment

note:

Section 2 appears as amended at the election of May 7, 1994.

§ 3. ORDINANCE GRANTING FRANCHISE.

Every ordinance granting, renewing, extending, or amending a franchise shall be read at three (3) regular meetings of the council, and shall not be finally acted upon until thirty (30) days after the first reading thereof. Within five (5) days following each of the three (3) readings of the ordinance, the full text thereof shall be published one time in some newspaper of general circulation in the city, and the expense of such publication shall be borne by the prospective franchise holder. No such ordinance shall become effective until the expiration of sixty (60) days following the date of its final adoption by the council, and every such ordinance shall be subject to the referendum procedure provided by state law.

Amendment

note:

Section 3 appears as amended at the election of May 7, 1994.

§ 4. TRANSFER OF FRANCHISE.

No franchise shall be transferred by the holder thereof except with the approval of the council expressed by ordinance.

Amendment

note:

Section 4 appears as amended at the election of May 7, 1994.

§ 5. REGULATION OF FRANCHISE.

Every grant, renewal, extension, or amendment of a franchise granted under this article, **whether so provided in the ordinance or not**, shall be subject to the right of the council:

- (1) 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 to be exercised only after notice and hearing.
- (2) To impose reasonable regulations to insure safe, efficient and continuous service to the public.
- (3) To require such expansion and extension of plants and facilities as are necessary to provide adequate service to the public.
- (4) To require every franchise holder to furnish to the city, without cost to the city, full information regarding the location, character, extent and condition 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.
- (5) To collect from every franchise holder operating in the city its fair and just proportion of the expense of excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, lighting, sweeping, and sprinkling such portions of the alleys, bridges, culverts, viaducts, and other public places and ways of the city as may be occupied or used in whole or in part by such utilities; or to compel such franchise holder to perform, at its own expense, its just share of such excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, lighting, sweeping and sprinkling.
- (6) To require every franchise holder to allow other franchise holder to use its tracks, poles, wires, pipes or other facilities, including bridges and viaducts, wherever in the judgment of the council such use shall be in the public interest, provided that in such event the council shall fix a reasonable rental to be paid to the owner of the facility for such use, after notice to the interested parties and a hearing of the facts.

(7) (a) To prescribe the form of accounts kept by every franchise holder.

(b) To examine and audit at any time the accounts and other records of any franchise holder.

(c) To require annual and other reports, including reports on the local operations of the utility, which shall be in such form and contain such information as the council shall prescribe.

(8) To require and collect any compensation and rental not now or hereafter prohibited by the laws of this state.

(9) To require such franchise holders who request an increase in rates, charges or fares, to reimburse the city for reasonable expenses incurred in employing rate consultants to conduct investigations, present evidence and advise the council on such requested increase.

Amendment

note:

Section 5 appears as amended at the election of May 7, 1994.

§ 6. REGULATION OF RATES.

The council shall have full power after notice and hearing to regulate by ordinance the rates, charges, and fares of every franchise holder operating in the city to the fullest extent allowed by state and federal law. Provided that no such ordinance shall be passed as an emergency measure. Any franchise holder requesting an increase in its rates, charges, or fares shall have, at the hearing on such request, the burden of establishing by clear and convincing evidence the value of its investments and the amount and character of its expenses and revenues. No franchise holder shall institute any legal action to contest any rate, charge, or fare fixed by the council until such franchise holder has filed a motion for rehearing with the council specifically setting out each ground of its complaint against the rate, charge or fare fixed by the council, and until the council shall have acted upon such motion.

Amendment

note:

Section 6 appears as amended at the election of May 7, 1994.

§ 7. ACCOUNTS OF MUNICIPALLY OWNED UTILITIES.

Accounts shall be kept for each public utility owned or operated by the city in such manner as to show the true and complete financial results of such city ownership and operation, including all assets appropriately subdivided into different classes, all liabilities subdivided by classes, depreciation reserve, other reserves and surplus; also revenues, operating expenses including depreciation, interest payments, rental and other distribution of annual income. The accounts shall show the actual capital cost to the city of each public utility owned, also the costs of all extensions, additions and improvements and the source of the funds expended for such capital purposes. They shall show as nearly

as possible the cost of any service furnished to or rendered by any such utility to any other city or governmental department. The city council shall annually cause to be made and published a report showing the financial results of such city ownership and operation, giving the information specified in this section and such additional data as the city council shall deem expedient.