

## **ARTICLE IX. PUBLIC UTILITIES, FRANCHISES AND LEASES**

### **Sec. 1. Inalienability of Public Property.**

The control and use of the public streets, sidewalks, alleys, bridges, parks, public buildings and any other public property of the city is declared to be inalienable by the city, except by ordinances not in conflict with the provisions of this charter; provided, however, the council may by ordinance grant, or authorize an officer or employee of the city to grant, sidetrack or switch privilege easements to common carriers, and daily, weekly, monthly or annual leases or use privileges of public streets, sidewalks, alleys, bridges, parks, public buildings and any other public property, all upon such terms and with the imposition of such conditions and limitations in such easements and leases or use privileges as the council may elect. 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, lease, easement or use permit affecting said public streets, sidewalks, alleys, bridges, parks, public buildings and any other public property.

### **Sec. 2. Power to Grant Franchise or Lease.**

(a) The council shall have the power by ordinance to grant, renew, and extend all franchises of all public utilities of every character operating within the city and all leases of property of the city; and, with the consent of the franchise holder or the lessee, to amend the same; provided, however, that

(1) no franchise shall be granted for a term of more than thirty years; and

(2) no lease covering any property of the city shall be granted for a term of more than sixty years.

(3) no lease covering any property of the city which lies under the waters of Corpus Christi Bay and was patented to the city by the State of Texas shall be granted for a term of more than five years unless approved by a majority of the qualified voters of the city, voting at an election duly called for such purpose, provided that leases for the construction on use of boat slips or docking facilities may be granted for not more than fifteen years without the necessity of an election required by this section.

(b) No lease covering any property of the city which lies under the waters of Corpus Christi Bay and was patented to the city by the State of Texas shall grant to the lessee any right to erect or maintain any structure or building with the exception of yacht basins, restaurants, buildings for the housing of bay front concessions and uses permitted by the city zoning ordinance in a bay front use zoning district.

### **Sec. 3. Ordinance Granting Franchise or Lease.**

(a) Every ordinance granting, extending or amending a franchise or a lease of property of the city shall be read at two regular meetings of the council, and shall not be finally acted upon until the twenty-eighth day after the first reading thereof. Within five days following each of the two readings of the ordinance, a description of the franchise or lease, including the names of the parties, the term, payments to the city and the purpose of the franchise or lease, shall be published one time in a newspaper of general circulation in the city, and the expense of such publication shall be borne by the prospective franchise holder or lessee. Copies of the full text of any such ordinance shall be made available to the public at no charge in the office of the city secretary. With the exception of any ordinance authorized by election provided herein, no ordinance granting, renewing, extending or amending a lease or franchise of more than five years shall become effective until the expiration of sixty days following the date of its final adoption by the council, and every such ordinance shall be subject to referendum procedure provided by state law, Section 282.003, Texas Government Code, as amended now or in the future.

(b) Notwithstanding any other provision of this charter, any ordinance granting or authorizing the execution of a lease having a term of five years or less may be finally passed and the lease authorized without publication of any notice, and in cases of declaration of emergency may be passed without necessity of two readings.

### **Sec. 4. Transfer of Franchise or Lease.**

No franchise or lease of property of the city shall be transferred by the holder thereof except with the approval of the council expressed by ordinance, which approval shall not be unreasonably withheld. Council approval may be read at two consecutive regular council meetings of the

council, or if an emergency is declared may be finally read and approved at one regular meeting of the council. Notwithstanding the foregoing, the city council may delegate to the city manager by ordinance the authority to approve routine transfers or franchises or leases and amendments designed to update existing franchises or leases to current city requirements.

**Sec. 5. Regulation of Franchises and Public Utilities.**

Except as limited by state or federal law, the city shall have the following rights to regulate franchisees and any public utilities operating in the city, whether under franchise or otherwise:

- (a) To forfeit any such franchise at any time for failure of the holder to comply with the terms of the franchise, but such power shall be exercised only by ordinance duly adopted after notice and hearing.
- (b) To adopt reasonable regulations concerning the use and restoration of the streets, easements and other public property, and to adopt reasonable regulations to insure safe, efficient and continuous service to the public.
- (c) To require the expansion of facilities as are necessary to provide adequate service to the public, taking into consideration the cost of the extension and the rates charged for the services.
- (d) To require every franchisee or public utility to furnish to the city, without cost to the city, full information regarding the location, character and extent of all facilities of such franchisee or public utility in, over, under or used upon the streets, alleys, easements and other public or private property in the city; and to regulate and control the location, relocation or removal of such facilities in public property without cost to the city.
- (e) To require every franchisee or public utility to allow other franchisees or public utilities to use its tracks, poles, bridges, tunnels and viaducts, provided that the use does not materially interfere with the owner's purposes nor materially impair the safety of said facilities.
- (f) To prescribe the form of accounts to be kept by any franchisee or public utility.
- (g) To examine and audit at any time during regular business hours, the accounts and other records of any franchisee or public utility.
- (h) To require annual and other reports, including reports on the local operations of the franchisee or public utility, which shall be in such form and contain such information taken from the books and records of the company as the city shall prescribe.
- (i) To require collection of any compensation or rental not now or hereafter prohibited by law.
- (j) To require any franchisee or public utility who requests an increase in rates, charges or fares, to reimburse the city for fifty percent of reasonable expenses incurred in employing rate consultants to advise the city on such requested increase.
- (k) To regulate by ordinance the rates, charges and fares of every franchisee or public utility operating in the city to the extent allowed by law; provided that no such ordinance shall be passed as an emergency measure. Any public utility or franchisee 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 property and the amount and character of its expenses and revenues. No franchisee or public utility shall institute any legal action to contest any rate, charge or fare fixed by the council until such public utility 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, or had a period of sixty days within which to act upon such motion for rehearing.

**Sec. 6. Regulation of Leases.**

Every grant, renewal, extension or amendment of a lease of property of the city, whether so provided in the lease or not, shall be subject to the right of the city:

- (a) To terminate such lease at any time for failure of the lessee to comply with the terms of the lease or the terms of this section.
- (b) To impose reasonable regulations to insure proper care, maintenance and upkeep of the property of the city.
- (c) To prescribe the form of accounts to be kept by every lessee if the rental or the license fees payable to the city are determined in whole or in part by the volume of business done by the lessee.
- (d) To examine and audit at any time during regular business hours the accounts and other records of the lessee.

(e) To require annual and other reports, including reports on the operations of the lessee, which shall be in such form and contain such information as the city shall prescribe.

**Sec. 7. Effect on Existing Contracts.**

No revision of the charter shall amend, enlarge or diminish any franchise or contract rights effective prior to such revision of the charter, unless otherwise provided in the franchise or contract.

**Sec. 8. Leases of Land or Interests in Land for Oil, Gas or Minerals.**

(a) In the making of any oil, gas or mineral lease concerning any mineral interests belonging to the city, the city shall publish notice of its intention to lease the mineral interests, describing the same, in a newspaper having a general circulation in the city, once a week for a period of three consecutive weeks, designating the time and place after publication where the city will receive and consider bids for oil, gas or mineral leases thereon. In calling for bids for any lease or leases, the city may specify such terms and conditions as shall be required by it in any lease or leases and any particular methods the city will utilize in evaluating the bids.

(b) On the date specified in the notice, the city shall receive and consider any and all bids submitted for the leasing of the mineral interests proposed to be leased. Upon review of all the bids, the council shall award the lease or leases based on the bid or bids determined to be most advantageous to the city. The council shall have the right to waive any defect, irregularity or informality in any bid or bidding procedure, and the council shall have the right to reject any or all bids submitted.

(c) In no event shall any lease be awarded to any person, firm or corporation except on compliance with these procedures, and should any lease be awarded without such compliance the same shall be void and of no force or effect.

**Sec. 9. Power of Eminent Domain.**

The city shall have the right and power to acquire any interest in a leasehold, a franchise or any public utility, or any portion thereof, under the power of eminent domain of the city as exercised pursuant to the procedures provided by state law or by ordinance.

**Sec. 10. Public Utilities.**

The city shall have power to own, maintain and operate, within or without the city limits, any public utility, and the city council shall adopt appropriate ordinances for the maintenance and operation thereof and fix the compensation to be charged therefor. The city shall have power to purchase electricity, gas, oil or any other article used by the public on such terms as the city may deem proper for sale and distribution to the inhabitants of the city and adjacent territory; provided, that no contract of purchase binding the city for a longer period than five years shall be valid unless authorized by a majority vote at an election called for such purpose.

**Sec. 11. Water Supply Contracts for Sale of Untreated Water.**

Notwithstanding any other provision of this charter, the city may by ordinance, without voter approval, contract to provide untreated water for a definite period of time or in perpetuity. Every such contract shall contain a provision that the rate to be paid for the water furnished under such contract shall be the published rate at the time of taking or a provision that the rate shall be the average cost of water to the city for each respective year of the contract as determined by the city. The city's obligations under any such contract shall be construed to entitle the purchaser to only that portion of the city supply equal to the ratio which the population of the area purchasing water bears to the total population of the area supplied through the city water system.