

### Article I. In General.

#### Sec. 21-1. Authority to grant generally; effect of conflicting provisions.

The city council shall, pursuant to the provisions of article XI, section 19, of the Constitution of the state, section 39732 of the Government Code of the state and the provisions of division 3, chapters 1 and 2 of the Public Utilities Code of the state, and any other provision of the laws of the state pertaining thereto, grant by ordinance a franchise to any person to furnish the city and its inhabitants with light, water, power, heat, transportation, telephone service or any other public utility service as provided by law, to use the public streets, ways, alleys and places as the same now or may hereafter exist, for the construction and operation of plants, works or equipment necessary or convenient for the furnishing thereof, or necessary or convenient for traversing any portion of the city for the transmitting or conveying of any service elsewhere. The city council, within the limits of the Constitution of the state and its powers under the laws of the state, shall provide the terms and conditions upon which all of such franchises shall be granted, subject to the provisions of this chapter.

Whenever any section of this chapter is in conflict with any provision of the Constitution or the laws of the state in respect to the granting of franchises, those provisions as set forth in the Constitution and the laws and the statutes of the state shall govern to the exclusion of these sections. It is the intention of this chapter to provide procedural steps, rules and regulations as a supplementary addition to those procedural steps, rules and regulations provided by the state Constitution and law, and it is also the intention of this chapter to provide procedural steps, rules and regulations in respect to the granting of franchises in those cases where the Constitution of the state and the statutes of the state have given cities power to grant franchises but have not covered by statute the procedural steps for granting of the franchises. (Mun. Code, Sec. 12000)

#### Sec. 21-2. Procedure for granting generally.

Before any franchise is granted by the city and the franchise is not within the provisions of division 3 of the Public Utilities Code of the state, or the proposed franchise or the public utility service to be franchised thereby is not governed by any other law of the state governing procedure for a franchise, the following procedure shall be followed:

- (a) The city council shall pass a resolution declaring its intention to grant the same, stating the name of the proposed grantee, the character of the franchise and the terms and conditions upon which it is proposed to be granted. Such resolution shall fix and state further the day, hour and place when and where any persons having any interest therein or any objections to the granting thereof may appear before the city council and be heard thereon. It shall further direct the city clerk to publish or post the resolution at least once within fifteen days of the passage thereof as required by law for the publication or posting of ordinances of the city.
- (b) The time fixed for such hearing shall not be less than twenty nor more than sixty days after the passage of the resolution.
- (c) At the time set for the hearing, the city council shall proceed to hear and pass upon all protests, and its decision thereon shall be final and conclusive. (Mun. Code, Sec. 12001)

Sec. 21-3. Term.

Every franchise shall state the term for which it is granted or shall state that it is for an indeterminate term. A franchise grant may be indeterminate, that is to say, that it may provide that it shall endure in full force and effect until the same, with the consent of the public utilities commission of the state, shall be voluntarily surrendered or abandoned by its possessor, or until the state or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take, under the power of eminent domain, all property actually used and useful in the exercise of such franchise and situate within the territorial limits of the state, municipal or public corporation purchasing or condemning such property, or until the franchise shall be forfeited for noncompliance of the terms by the possessor thereof. (Mun. Code, Sec. 12002)

Sec. 21-4. Grant to be in lieu of all other franchises.

Any franchise granted by this city with respect to any given utility service or other service or facility using public streets, ways, alleys and places within the city shall be in lieu of all other franchises, rights or privileges owned by the grantee or by any successor of the grantee to any rights under such franchise, for the rendering of such utility service within the limits of the city as they now or hereafter may exist. The acceptance of any franchise shall operate as an abandonment of all franchises, rights and privileges within the limits of the city as such limits shall at any time exist, in lieu of which such franchise shall be granted.

Any franchise granted under this chapter shall not become effective until written acceptance thereof shall have been filed by the grantee thereof with the city clerk within thirty days after the passage of the ordinance granting the franchise, and when so filed such acceptance shall constitute a written acceptance of the terms and conditions set out in this chapter and in the ordinances granting the franchise. (Mun. Code, Sec. Sec. 12003)

Sec. 21-5. Franchise not to impair city's right of eminent domain.

No franchise grant shall in any way or to any extent impair or affect the right of the city to acquire the property of the grantee thereof either by purchase or through the exercise of the right of eminent domain, and nothing contained in this chapter shall be construed to contract away or to modify or to breach either for a term or any perpetuity of the city's right of eminent domain with respect to any public utility. Every franchise grant shall reserve to the city the right to purchase the property of such utility. In fixing the price to be paid by the city for any utility, no allowance shall be made for franchise value, other than the actual amount paid to the city at the time of the franchise acquisition, good-will, going concern, earning power, increased cost of production, severance damage or increased value of right of way. (Mun. Code. Sec. 12004)

Sec. 21-6. Duties of grantee.

By its acceptance of any franchise under this chapter the grantee shall covenant and agree to perform and be bound by each and all of the terms and conditions imposed in the grant or by this procedural chapter, and shall further agree to:

- (a) Comply with all lawful ordinances, rules and regulations heretofore or hereafter adopted by the city council governing the construction, maintenance and operation of its plants, works or equipment.
- (b) Pay to the city on demand the cost of all repairs to public property made necessary by any of the operations of the grantee under such franchise.

VERSION 10/2007

Sec. 21-6

Sec. 21-7

- (c) Indemnify and hold harmless the city and its officers in such manner as set forth in the grant from any and all liability for damages approximately resulting from any operations under such franchise.
- (d) Remove and relocate without expense to the city any facilities installed, used and maintained under the franchise, if and when made necessary by any lawful change of grade, alignment or width of any public street, way, alley or place, including the construction of any subway or viaduct.
- (e) Pay to the city during the life of the franchise a compensation to be specified in the grant for the privileges and rights granted under the franchise. (Mun. Code, Sec. 12005)

Sec. 21-7. Exercising rights without franchise prohibited.

No person shall use the public streets, ways, alleys and places within the city as the same now or may hereafter exist for the construction and operation of plants, works or equipment necessary or convenient for furnishing the city and its inhabitants with light, water, power, heat, transportation, telephone service or other means of communication, or for any public utility service, nor shall any person use the public streets, ways, alleys and places within the city as the same now or may hereafter exist for the construction and operation of plants, works, equipment, poles, lines, pipes or vehicles necessary or convenient for transmitting or conveying any public utility service including light, water, power, heat, transportation, telephone service or other means of communication, or the laying of gas and water pipes in public streets, without having in existence a valid franchise to do the same issued pursuant to this chapter or pursuant to other valid and lawful authority of the state, or county, pursuant to the laws of the state and the ordinances of the county and this Code or other ordinances of the city. (Mun. Code, Sec. 12006)

(Mun. Code, Secs. 12000, 12001, 12002, 12003, 12004, 12005, 12006)

(This page left blank intentionally)