

ARTICLE XI. FRANCHISE AND PUBLIC UTILITIES¹

Sec. 11.01. Powers of the City.

In addition to the City's power to buy, construct, lease, maintain, operate, and regulate public utilities and to manufacture, distribute, and sell the output of such utility operations, the city shall have further powers as may now or hereafter be granted under the constitution and laws of the State of Texas.

Sec. 11.02. Franchise, power of council.

The City Council shall have power by ordinance to grant, amend, renew and extend, all franchise of all public utilities of every character operating within the City of New Braunfels. All ordinances granting, amending, renewing, or extending franchises for public utilities shall be read at two (2) separate regular meetings of the City Council, and shall not be finally passed until thirty (30) days after the first reading; and no such ordinance shall take effect until thirty (30) days after its final passage; and pending such time, the full text of such ordinance shall be published once each week for four (4) consecutive weeks in a newspaper in the City of New Braunfels, and the expense of such publication shall be born [borne] by the proponent of the franchise. No public utility franchise shall be granted for a term of more than twenty (20) years nor be transferable except with the approval of the City Council expressed by ordinance.

Sec. 11.03. Franchise value not to be allowed.

No value shall be assigned to any franchise granted by the City of New Braunfels under this Charter 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.

Sec. 11.04. Right of regulation.

All grants, removals, extensions, or amendments of public utility franchises, whether it be so provided in the ordinance or not, shall be subject to the right of the City Council of the City of New Braunfels:

- (a) To repeal the same ordinance at any time upon the failure of the grantee to comply with any provision of the ordinance, the franchise, the Charter of the City of New Braunfels, any applicable statute of the State of Texas or the rule of any applicable governmental body,
- (b) To require proper and adequate extension of plant and service, and the maintenance of the plant and fixtures at the highest reasonable standard of efficiency,
- (c) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates,
- (d) At any time to examine and audit the accounts and other records of any such utility and to require annual and other reports, including reports on operations within the City of New Braunfels; and shall have the power to prescribe the accounts and accounting system to be used by a public utility,

¹Code references—Cable communications, ch. 22; utilities, ch. 130.

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- (e) To impose such reasonable regulations and restrictions as may be deemed desirable or conducive to the safety, welfare, and accommodation of the public,
 - (f) To require such compensation and rental as may be permitted by the laws of the State of Texas,
 - (g) To require a utility to repair at its expense public property, streets, and ways which are destroyed or damaged in the process of laying or maintaining their lines.

Sec. 11.05. Grant not to be exclusive.

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

Sec. 11.06. 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 property as now or hereafter provided by law.

Sec. 11.07. Extensions.

All extensions of public utilities within the City limits shall become a part of the aggregate property of the public utility, shall be operated as such, and shall be subject to all the obligations and reserved rights contained in this Charter and in any original grant hereafter made. The right to use and maintain any extension shall terminate with the original grant and shall be terminable as provided in Section 11.04 of 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.

Sec. 11.08. Other conditions.

All franchises heretofore granted are recognized as contracts between the City of New Braunfels 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 of New Braunfels to exercise the right to eminent domain in the acquisition of 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 grantee which shall include the right to require proper and adequate extension of plant and service and in the maintenance of the plant and fixtures at the highest reasonable standard of efficiency. Every public utility franchise hereafter granted shall be held subject to all the terms and conditions contained in the various sections of this article whether or not such terms are specifically mentioned in the franchise. Nothing in this Charter shall operate to limit in any way, as specifically stated, the discretion of the City Council or voters of the City in imposing terms and conditions as may be reasonable in connection with any franchise grant.

Charter cross reference—Eminent domain generally, § 2.03.

Sec. 11.09. Public utilities board.

So far as not inconsistent with the terms and provisions of any existing encumbrance, or the general laws of the State of Texas, the City Council shall have the power and may at any time create by ordinance to such effect, a public utilities board, for the purpose of managing, controlling, and operating any or all of any such system or systems or properties at any time acquired or owned or held by said City, and which shall be known as the public utilities board of said City, and consist of five (5) freeholders of said City, one of whom shall be the mayor of said

City, and the compensation of the members of such board, their terms of office, the powers and duties of such board and the members thereof, the manner of exercising same, the appointment or election of their successors, and all matters pertaining to their organization and duties, shall be as prescribed by the City Council in the ordinance creating such board; all as the City Council may deem best; and such City Council may thereafter at any time by ordinance to such effect, amend, modify, or change the terms and provisions of any such ordinance creating any such board, and may abolish such board or modify or change the duties of such board or of the members thereof, all as the City Council may deem best.

Sec. 11.10. 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 and all liabilities, appropriately subdivided by classes, depreciation reserve, other reserves and surplus, also revenues, operating expenses including depreciation, interest payments, rental, and other disposition of annual income. The accounts shall show actual capital cost to the City of each public utility owned, also the costs of all extensions, additions, and improvements and the source of 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 City government department. The City Council shall cause an annual audit report to be made by a Certified Public Accountant and shall publish a summary of such report showing the financial results of such City ownership and operation, giving the information specified in this section and such other data as the City Council shall deem expedient.

Sec. 11.11. Sales of electricity, water and sewer services.

- (a) The City Council shall have the power and authority to sell and distribute electricity and water and to sell and provide for sewer services and any other utilities to any person, firm or corporation outside the limits of the City of New Braunfels, and to permit them to connect with said system under contract with the City, under such terms and conditions as may appear to be for the best interests of the City.
- (b) The City Council shall have the power and authority to prescribe the kind of materials used within or beyond the limits of the City of New Braunfels where it furnishes the service, and to inspect the same and require them to be kept in good order and condition at all times and to make such rules and regulations as shall be necessary and proper, and prescribe penalties for noncompliance with same.

Sec. 11.12. Regulation of rates and service.

The City Council shall have full power after notice and hearing to regulate by ordinance the rates, charges and fares of every public utility franchise holder operating in the city, provided that no such ordinance shall be passed as an emergency measure. Any franchise holder requesting an increase in its rate, 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 City Council until such franchise holder has filed a motion for rehearing with the City Council specifically setting out each ground of its complaint against the rate, charge or fare fixed by the City Council, and until the City Council shall have acted upon such motion. The City of New Braunfels shall [have the] power to employ at the expense of the grantee, expert assistance and advice in determining a reasonable rate and equitable profit to the grantee.